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S. HRG. 99-325

IMMIGRATION MARRIAGE FRAUD

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

FRAUDULENT MARRIAGE AND FIANCE ARRANGEMENTS TO OBTAIN PERMANENT RESIDENT IMMIGRATION STATUS

JULY 26, 1985

Serial No. J-99-43

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
52-653 O WASHINGTON : 1986

5521-15

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IMMIGRATION MARRIAGE FRAUD

FRIDAY, JULY 26, 1985

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:18 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Grassley and Simon.

Staff present: Richard W. Day, chief counsel and staff director, Carl Hampe, Deborah Gibbs, and Denise Herzog.

Also present: John Ratigan, Bureau of Refugee Affairs, Department of State.

OPENING STATEMENT OF SENATOR ALAN K. SIMPSON

Senator SIMPSON. Good morning. I do apologize for my tardiness; White House of course. Some other marvelous excuse. They get better all the time, do they not, Chuck? Yes, they do. That is really where I was, and dabbling in the mysteries of tax reform and deficit reduction, fascinating stuff.

Well, we have a serious issue before us this morning. We are going to examine this issue of immigration marriage fraud, which could best be described I think as the use of nonbona fide marriage, or fraudulent marriage arrangements and fiance arrangements, which are made to obtain permanent resident immigration status.

We are going to inquire into the nature and extent of this situation, determine whether we see but another way of gimmicking our generous, very generous legal immigration laws, consider whether legislation is necessary to address the problem, and if so, what form that legislation might take.

I want to express to all of the witnesses on behalf of the subcommittee, and sincerely so, our deep appreciation for your agreeing to be here today to contribute to this discussion.

I know that in many cases that is very tough, to do that. There are elements of pain and rejection and exploitation in here that are real, and I admire you very much for coming before the subcommittee to share your views, and your situation.

Our present immigration laws reserve our very most favored top-drawer status for spouses of American citizens, and the U.S. system, based to a large degree upon the principle of family reunification, certainly there can be no more important reunification than spouses, husband and wife.

Thus for spouses of American citizens there are no numerical immigration limitations. There are no backlogs. There are no waiting periods to obtain permanent resident status. The waiting period for citizenship is 3 years, which is 2 years less than the normal one of 5 years, and for spouses of U.S. servicemen and overseas personnel, there is no waiting period at all.

I doubt that there are many American citizens that are aware of that but I can tell you that it is most assuredly known by those who yearn to come here.

And yet our concern to benefit the spouses of our citizens can make us very vulnerable to abuse, for among those relationships covered by family reunification, spouse is the one relationship that is largely self-created. We do not have the choices with mother and father and brother and sister, but we do have a rather significant part to play in his or her spouse, and the determination of what that is, obviously. So, today we will examine immigration marriages of convenience, and, with that, I will ask if my friend Chuck Grassley of Iowa, who is a remarkably significant contributor to this subcommittee in so many ways that I could not list them all, my loyal ally in 4 years of activity as chairman here. Chuck, do you have anything you want to add?

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. Thank you very much. First of all, I, too, should explain to everyone why I may not be here during the entire hearing. We are considering a legislative veto provision to the Federal Trade Commission authorization bill, and because I have an amendment in that area, I will have to spend a great deal of time with Senator Levin on the floor this morning.

But I do wish to thank Senator Simpson, the chairman of the committee, for bringing to the public's attention this problem.

It is bad enough when people who are waiting for years and years in a long lines to come to this country legitimately and are not able to do so. Today we will have testimony presented to us, how people use subterfuge to accomplish that goal, and more horrendous is the fact that some people are making profit off the business of arranging the subterfuge. I hope that not only will the hearing be a success, which I expect that it will, but I hope that it leads to our ability to bring legislative action to correct this situation which is indeed very serious.

Senator SIMPSON. Thank you, Senator Grassley. And now let me recognize a new member of the subcommittee on Immigration and Refugee Policy and a very fine contributing member, a thoughtful member, a participating member, the Senator from Illinois, Paul Simon. Paul.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. Thank you very much, Mr. Chairman. Like Senator Grassley, I am going to have to be in and out here today.

Senator SIMPSON. I knew you would leave me here, both of you. Go right ahead.

Senator SIMON. But I am here primarily to learn. We, obviously, have a problem here, and I think the law has to be tightened up.

How we do this without being unfair to people, is what we have to explore. I look forward to reading and hearing the testimony. Thank you.

Senator SIMPSON. Thank you, Paul. All right. We will proceed to the first panel, then: Commissioner Alan Nelson of the Immigration and Naturalization Service, and Vernon Penner, Deputy Assistant Secretary of State for Visa Services. If you would come forward to the table, please, we would appreciate it, and Commissioner Nelson, we always appreciate having your views, and State Department views are very important. You must work together closely, that is important in this area, and so, Mr. Nelson, would you please begin, if you would.

STATEMENT OF A PANEL CONSISTING OF HON. ALAN C. NELSON, COMMISSIONER, THE IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY JACK SHAW, ASSISTANT COMMISSIONER FOR INVESTIGATIONS; RICHARD E. NORTON, DEPUTY ASSISTANT COMMISSIONER FOR INVESTIGATIONS; HON. VERNON D. PENNER, JR., DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICES, ACCOMPANIED BY CORNELIUS SCULLY

Mr. NELSON. Thank you, Mr. Chairman, Senator Grassley, Senator Simon. It is again a pleasure to be before you, and as you indicated in your opening remarks, a subject matter that is of extreme importance, one that has probably not had the attention that it deserves, so the compliments to you and the subcommittee for initiating this hearing and this discussion.

I would like to just also start out, we are often negligent in not giving credit to people, but I know of members of your staff, particularly John Ratigan, who has done an excellent job in getting this organized, and I would like to compliment him and I would like to compliment the staff of the Immigration Service because I think they have done an excellent job in the prepared testimony. And to avoid getting in trouble, I would not consider reading it because it is many pages, but I think very thorough, and it does lay out, we think, a lot of examples of the problem of marriage fraud, indications of the type of fraud, and the problem areas that we have in this area and I would ask that it be incorporated in the record.

Marriage has always played a crucial role in the laws and policies governing both the immigration and naturalization of aliens.

The existence and preservation of close family ties form the basis for numerous benefits and waivers under the law. Unfortunately, these special privileges are being abused by many people who feign legitimate relationships to circumvent the law.

Tremendous draw factors and few deterrents make this type of fraud irresistible to aliens seeking legal permanent resident status. Marriage fraud and finance fraud now pose significant threats to the integrity of our lawful immigration procedures, and I think that is what we are all about, in your overall immigration reform legislation and this, that we want to continue our heritage of legal immigration. It is very important that we deal with these areas, such as the marriage fraud problem, to continue that heritage.

The value placed on marriage and the unity of the nuclear family is underscored by entirely exempting the immediate relatives of U.S. citizens, and their children, spouses, and parents from the numerical restrictions cited in the Immigration Act. Therefore, the immediate relatives do not have to wait for a visa number to become available, and can cut ahead of those in the preference categories.

That is fine except for the problems we face. I think our testimony, Mr. Chairman, and again I would ask that it be incorporated in the record, lays forth a lot of the inducements of marriage fraud, the means of qualifying for immigration status. We talk about the administrative penalties for fraud, the problems with the current definition, criminal penalties for fraud, types of fraud, such as the one-sided marriage fraud. The major kind of cases, we cite a lot of examples there.

I understand you will be having some testimony directly into that area, and then we turn, and I will turn now to the recommendations.

Toward the end of the testimony we have some eight recommendations. First, and I think we can maybe get some stronger language in the statute, making clear this is an important problem and should be given attention to. It is not a victimless crime, plus we have a thriving cottage industry in the underground economy.

We have several recommendations as to amending the statute and I will not go into the details, but I think the law must be changed to clearly serve intent, and these recommendations are incorporated in the testimony.

Third, we believe that the marriage relationship must be statutorily defined. Too often there is just a scam type of marriage that gets by.

Fourth, we believe that a 2-year conditional residency requirement for all spouses will best serve to deter fraud, and again our testimony spells out some thoughts as to how that can be carried out.

Fifth, we believe that the burdens placed on the Government to prove fraudulent intent must be eased to assure that the aliens who participate in marriage fraud are more easily deported.

It is a difficult thing to prove, and therefore we are under a tremendous disadvantage, and I think there are some changes that can be made that are fair and balanced in this area.

Sixth, we firmly believe that section 241(f) should be amended to indicate that no equities can be claimed through a spouse or a child unless that spouse or child resides with the alien and is fully supported financially, and I think that speaks for itself.

Seventh, we recommend the creation of a new deportation charge to mirror the exclusion charge in other sections of the law. This will render an alien deportable for attempting to procure a visa or other documentation by fraud. Currently, section 204(c) only penalizes the alien if he has already received a visa; there is no penalty at present, apart from the criminal sanctions, for trying, and that can be corrected, we believe.

Eighth, we believe that section 245(c) should be changed to indicate that an alien may not adjust through a marriage contracted

after an order to show cause or notice of voluntary departure has been issued to him.

Further, he should not be able to use the marriage to reenter the United States unless he has resided overseas for a full year.

So we believe, Mr. Chairman, that these changes are critical and should be pursued in legislation, and we certainly very much appreciate, again, you initiating this hearing and focusing on this important area, and we very much look forward to working with you and the subcommittee in pursuing some important changes here. Thank you.

[The statement follows:]

PREPARED STATEMENT OF ALAN C. NELSON

Mr. Chairman and members of the Subcommittee:
On behalf of the Immigration and Naturalization Service, I am pleased to have this opportunity to testify on the subject of immigration-related marriage and fiance fraud.

IMMIGRATION AND MARRIAGE

Marriage has always played a crucial role in the laws and policies governing both the immigration and naturalization of aliens. The existence and preservation of close family ties form the basis for numerous benefits and waivers under the law. Unfortunately, these special privileges are being abused by persons who feign legitimate relationships to circumvent the law. Tremendous draw factors and few deterrents make this type of fraud irresistible to aliens seeking legal permanent resident status. Marriage fraud and fiance fraud now pose significant threats to the integrity of lawful immigration procedures.

BENEFITS UNDER THE LAW

The Immigration and Nationality Act of 1952, as amended on October 3, 1965, establishes both quantitative and qualitative requirements for immigration. Limitations on the numbers of immigrants to be admitted annually were set for seven categories to preserve family ties, provide qualified workers for the labor market, and meet the nation's obligation to legitimate political and religious refugees.

The value placed on marriage and the unity of the nuclear family is underscored by entirely exempting the immediate relatives of United States citizens (defined in Section 201(b) as their children, spouses, and parents) from all the numerical restrictions cited in the Act. Thus, immediate relatives do not have to wait for a visa number to become available, and effectively "cut ahead" of those intending preference immigrants who must wait in line. For some preference immigrants in oversubscribed categories, the wait is as long as 15 years.

For example, visa numbers are only now available to natives of the Philippines seeking visas as members of the professions or aliens with exceptional skills who applied before October 15, 1970. An alien who marries a United States citizen, however, does not need to wait for a number and normally will acquire immigrant status within several months. Similarly, an alien fiance indicating an intent to marry a United States citizen need not await a number and can readily obtain a fiance visa.

For alien visitors in the United States, marriage to a United States citizen waives the bar to adjustment of status imposed by Section 245(c) on individuals who have accepted unauthorized employment in the United States. This gives a significant economic advantage to an alien who accepted unauthorized employment. Spousal relationships also exempt aliens from the labor certification requirements of Section 212(a)(14), thereby allowing significant numbers of unskilled laborers to enter the marketplace.

Alien spouses benefit from waivers of excludability on the grounds of illiteracy, mental retardation, tuberculosis, prostitution, criminal convictions, and visa fraud. Even naturalization is greatly expedited through marriage to a United States citizen, with the normal five year residence requirement reduced to three years for spouses of United States citizens (Section 319(a)), or waived entirely for the spouses of United States citizens who are U. S. government employees assigned abroad (Section 319(b)).

ADDED INDUCEMENTS

Marriage has become the single largest qualifying mechanism for immigration because it is the easiest to pursue. By virtue of a simple ceremony taking only a few minutes, marriage to a United States citizen confers "most favored alien" status on the beneficiary and almost instantly results in immigrant status as no visa number or certification from the Department of Labor is necessary. It is also perceived as the cure-all for any immigration problem or illegality, whether the alien is inside the United States or abroad, in legal status, or not.

This perception has led to an almost exponential increase in the number of fiance and spousal relationships creating immigrant status. While total immigration to the United States dropped 9.6% from 601,442 in Fiscal Year 1978 to 543,903 in Fiscal Year 1984, the number of immigrants acquiring status as the spouses of United States citizens increased 43% from 78,057 in Fiscal Year 1978 to 111,653 in Fiscal Year 1984. Similarly, the number of aliens acquiring second preference immigrant status through marriage to legal permanent resident aliens jumped from 30,958 in Fiscal Year 1978 to 41,814 in Fiscal Year 1981, and dropped somewhat to 37,643 in Fiscal Year 1984.

QUALIFYING FOR IMMIGRANT STATUS AS A SPOUSE OR FIANCE

The mechanism to acquire immigrant status through marriage is relatively simple. Section 204 (8 U.S.C. 1154) states:

"Any citizen of the United States claiming that an alien is entitled to a preference status by reason of the relationships described in paragraphs (1), (4), or (5) of section 203(a) (unmarried sons or daughters of United States citizens, married sons or daughters of United States citizens, brothers and sisters of United States citizens), **or to an immediate relative status under 201(b)** (children, spouses, or parents of a citizen of the United States), **or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2)** (spouse or unmarried son or daughter of a legal permanent resident alien)...**may file a petition with the Attorney General for such classification..."**

Following the marriage, the United States citizen or permanent resident alien must file a petition accompanied by a marriage certificate and some evidence of citizenship or lawful permanent residence with this document. If either he or his alien spouse claims to have been previously married, evidence of termination of that prior relationship is required.

Both the petition (which is executed by the United States citizen or legal permanent resident alien) and the application for an immigrant visa or for adjustment of status (which is executed by the alien beneficiary) make specific material claims to the Service about the relationship and residence arrangements. Both documents question whether the spouses live together at a particular address. Cohabitation is a key indicator of whether the relationship is a valid, viable, on-going, normal spousal relationship, but is not a sine qua non for approval of the immigration benefit.

Qualifying for status as an alien fiance and then converting to permanent resident status is easier. Section 101(a)(15)(K) defines such an alien as one

"who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry..."

Section 214(d) spells out the mechanism by which the United States citizen petitions for the alien fiance, and indicates only that

"...it (the petition) **shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have a bona fide intention to marry and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival...."**

The law does not presently require that these fiances have ever met. Thus United States citizens legitimately petition for "mail order brides", advertised in the backs of magazines and tabloids sold at the checkout lines of supermarkets. The alien admitted as a fiance will go through the appearance of wanting to marry and build a future life until after the actual wedding ceremony. The alien then promptly abandons his or her spouse.

The law, as interpreted, does not require that the marriage be intact and viable at the time the alien applies for permanent residence under Section 214(d):

"In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees."

Precedent decisions demand only that a valid marriage (absent pre-existent fraud or undissolved prior marriages) occur; consummation and cohabitation, viability, and intent at the time the alien applies for "recordation" of lawful admission has been deemed immaterial. Thus an alien can acquire status even if he or she has no intent of family reunification.

The liberal interpretation of fiance statutes has been reflected in the increasing use of fiance visas to enter the United States and obtain employment authorization. Because marriage to any United States citizen will ultimately qualify them for immigrant status, an alien can use the work-authorized visa to find someone who will enter into a sham marriage more cheaply than the fiance petitioner or someone visiting the alien's country. In Fiscal Year 1984 alone, 11,721 alien fiances were admitted to the United States. Of these, 4,935 adjusted status, and 1,438 departed the United States--leaving almost 45% unaccounted for.

PROBLEMS WITH THE LEGAL DEFINITION OF "MARRIAGE", AS PRESENTLY INTERPRETED

Although the Act gives substantial preferential treatment to the spouses of United States citizens and legal permanent resident aliens and to the fiances of United States citizens, it is silent {apart from the specific bar to proxy marriages contained in Section 101(a)(35)} regarding the definition of marriage. Public standards for marriages, incorporated in the individual states and foreign countries' domestic relation codes, have largely governed and defined valid marriages. These definitions have been circumscribed through the years by various court decisions defining what constitutes a valid marriage for immigration purposes. The latter frequently apply the broadest of interpretations to the relationship so that immigration marriages often barely resemble the common interpretation of a nuclear family. In consequence, it is frequently difficult to differentiate a "good marriage" from a "bad marriage". Besides, even when it is discovered that the spouses are not living together, they plead temporary separation due to family arguments and invariably claim to be in the process of reconciliation.

ADMINISTRATIVE PENALTIES FOR FRAUD

If a person enters into a sham marriage, lies in his application, and cuts off lines of inquiry when he is questionned by immigration or consular officers regarding the marriage, he is subject to both administrative and criminal penalties. Administratively, the individual alien caught in a fraudulent marriage is amenable to denial of the

petition and the immigration benefit. If an immigrant visa was already issued on the basis of a marriage determined to be fraudulent, that alien is precluded from obtaining another visa on the basis of a marriage {Section 204(c)}. This latter provision does not, however, bar him from obtaining a waiver of deportation under Section 241(f) as the spouse, parent, or child of a United States citizen or permanent resident alien.

CRIMINAL PENALTIES FOR FRAUD

More significantly, however, both participants in a sham marriage may be subject to criminal prosecution for fraud. Title 18, U. S. C. 1001 provides for penalties of up to $10,000 in fines and up to five years imprisonment for anyone who

"...in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry..."

Title 18, U. S. C. 1546 similarly provides for penalties of up to $2,000 in fines and up to five years imprisonment for anyone who

"...knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affadavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affadavit, or other document containing any such false statement..."

Unfortunately many fraudulent marriages are never uncovered, or are discovered only after the statutes have tolled. Even if fraud is alleged by the petitioning spouse, it can be virtually impossible to locate the alien participant.

Although Section 290(c) of the Immigration and Nationality Act authorizes the Social Security Administration (SSA) to release data concerning aliens, provisions contained in the Tax Reform Act of 1976 limit the dissemination of taxpayer identification information held by the Social Security Administration for the purpose of locating aliens. SSA

disclosures under Section 290(c) now are limited to information about Social Security beneficiaries and aliens in possession of non-work numbers; thus, the Service's principal tool for locating illegal aliens and those who had obtained legal status through fraud has been eliminated.

Even if located, it is nearly impossible to bring deportation proceedings against these aliens as, under the interpretation of Section 241(c), once the benefit has been accorded, the government must prove fraudulent intent. The amount of proof demanded is difficult to amass, and hinges on statements against interest by both the alien and the petitioner.

TYPES OF FRAUD

Fraud appears in many guises. The petitioner and beneficiary may in fact have gone through a marriage ceremony and may be living together, but one or both may be concealing a prior undissolved marriage. The petitioner may be an imposter using someone else's identity and birth documents. He may even be an illegal alien using the documents of a dead United States citizen--a situation difficult to ascertain if the exact date and place of death are unknown. Frequently alien spouses will go through a "sham divorce", and then contract fraudulent marriages with United States citizens who file petitions for them. While the petitions are being processed, the aliens continue to reside together as man and wife. After they independently acquire permanent resident status, they remarry each other. More commonly, however, an alien just enters into a marriage with a person who agrees to file the necessary forms for him to cure his illegality.

The myriad forms of fraud can then be gathered into two broader categories of fraud: The first might be called "contractual fraud." This occurs when both parties to the marriage agree from the onset to participate in a limited purpose, immigration marriage. There is no cohabitation, and generally no consummation.

Pre-nuptial agreements, written or unwritten, limit the relationship to immigration matters and stipulate that the marriage will be dissolved as

soon as the immigration benefit is accorded or as soon as the parties feel it is safe to formally terminate the contract. These accords are particularly important so the citizen does not become responsible for any debts the alien might incur, and does not have his or her profit cut by having to pay for the divorce. Usually a fee or some consideration of value is given (several months' rent, narcotics, debt forgiveness, foreign trinkets, etc.). While marriage can be arranged for free, many cost in the realm of $3,000 to $5,000. Some aliens have paid as much as $20,000 for marriage packages that include attorney services.

The arrangers will carefully coach the participants on how to evade detection and pass any Service scrutiny. Detailed crib sheets may be provided which outline the questions commonly asked at INS interviews, or the spouses may be subjected to a "dry run" interview by an attorney to assure that they can answer any questions posed without faltering. Apartment keys are exchanged, and sometimes a joint bank account is opened to give the appearance of legitimacy. Identification may be changed to reflect the female's new married name. The spouse may be deliberately introduced to the landlord, building superintendent, or neighbors so that he or she is known in the building should INS agents make inquiries.

Many United States citizens and permanent resident aliens will marry because they "feel sorry" for the alien who is facing deportation, are inspired by resentment for a system which numerically limits immigration (open borders and one world government types), went through sham marriages themselves to acquire status, or are coerced by parents, lovers, or friends to participate in the sham to facilitate the entry of their friends, relatives, or business acquaintances.

Another common feature of these marriages, and of all fraudulent marriages, is the dimension of coercion. Because the alien and the arranger are well aware of the risks and penalties of disclosure, particularly before the benefit is accorded, they feel no compunction in intimidating their United States citizen or resident alien spouses or fiances. Violence and threats of violence, extortion, blackmail, etc. are frequently used to assure that the petitioner does not alert Immigration to the fraud before the alien receives his status, and to assure that he

or she swears in any interviews held before the Service that the marriage is bona fide. Cooperating Service informants often report such threats, and a number of convictions have recently been secured against arrangers under Title 18, U.S.C. 1512 (Tampering with a Witness,Victim, or Informant) and Title 18, U.S.C. 1622 (Subornation of Perjury).

"ONE-SIDED MARRIAGE FRAUD"

The second major category of marriage fraud, and by far the more difficult for the Service to contend with, is the "one sided marriage fraud." In this case, a smooth-talking alien convinces an individual, usually a United States citizen, that the marriage is real. Frequently immigration is not discussed, or it is downplayed as the motivational factor behind the urgency of the marriage. Immediately upon acquisition of the immigration benefit (sometimes literally on the steps of the church or city hall), the alien abandons the petitioner. In fiance cases, INS can do nothing if the marriage occurs within the ninety day window. In cases of adjustment or immigration, the Service can do nothing if the spouses have resided together but one day. It is difficult for an individual to realize and admit that he or she has been duped by a clever alien; it is twice as hard to learn that the alien cannot be removed from the United States.

MAJOR MARRIAGE FRAUD CASES

The goal of the fraud perpetrator is to gain the benefit of legal permanent resident status at the lowest cost with the least risk in the shortest amount of time. Numerous underground businesses, which cater to matching the demand of aliens for cooperative "spouses" with the supply of individuals willing to make an easy dollar, strive to establish foolproof ways of foiling Service detection efforts. Some of these businesses spring into life at the command of the most legitimate of institutions; others are unrelated to immigration law as beauty parlors and donut shops. What they have in common are individuals who put the alien in touch with a willing marital partner who, for a fee, will marry the alien and petition for his immigration.

The Service focuses its enforcement efforts on detecting and prosecuting major fraud facilitators such as those who arrange sham immigration marriages. During Fiscal Year 1984, 62 major marriage fraud rings were investigated by INS nationwide.

The following are examples of some of the types of fraud rings recently broken:

In Los Angeles, California, an attorney was convicted in November 1984, and sentenced in February 1985, along with six co-conspirators, for arranging sham immigration marriages between Filipinos and United States citizens. Convicted on 16 counts of conspiracy and fraud, he is believed responsible for arranging over 50 marriages for which the aliens were charged $3,000 to $5,000.

In New York City, during March 1985, an attorney was disbarred for lying and fabricating addresses in order to process quick divorces for alien clients. Over 260 fraudulent divorces were uncovered by INS agents. Although the statutes for federal fraud prosecutions had tolled and the state chose not to prosecute for the fraud committed against itself, the Departmental Disciplinary Committee for the First Judicial Department of the Supreme Court of New York County barred him from practice because of egregious deceit.

In Oklahoma City, Oklahoma in March 1985, an attorney was sentenced for arranging a sham marriage for an Iranian. In Honolulu, Hawaii in April 1985, an attorney was disbarred following conviction for subornation of perjury in connection with the operation of a marriage fraud ring on the islands of Oahu and Maui.

A notary public in Del Rio, Texas was convicted in March 1985 for arranging "thousands" of sham marriages over the course of ten years. A Mexican attorney in Saltillo, Coahuila, Mexico was prosecuted in Mexico for creating the fraudulent Mexican state records attesting to the identity and marital status of the Mexicans who participated in the Del Rio schemes.

In Chicago, Illinois, eight individuals associated with a ring that arranged sham marriages between illegal Pakistanis and welfare mothers were convicted and sentenced during April 1985 following conviction for fraud and making false statements. It is estimated that over 100 marriages were arranged by the ring.

In Newark, New Jersey, a warrant is outstanding for the arrest of an individual indicted for arranging up to 200 sham marriages. The participants used counterfeit New York City marriage certificates and counterfeit U. S. birth certificates to support petitions for permanent residence.

In the Eastern District of Louisiana during May 1985, 25 individuals were indicted on charges of conspiracy and making false statements in connection with the operation of a marriage fraud ring centered in Lafayette, Louisiana. The alien participants in the marriages included five Jordanians, four Lebanese, an Iraqi and an Egyptian, who were students at nearby universities. A donut shop manager has been indicted as the arranger of the schemes.

In Belle Glade, Florida, a minister was arrested last month, together with 13 participants in fraud marriage schemes involving Haitians and United States citizens. The illegal aliens paid up to $10,000 to the arrangers and spouses for the filing of the petitions to accord immigration status.

In Kansas City, Kansas, seven Nigerians were recently indicted for their involvement in sham marriages. They married United States citizens not only to acquire INS benefits, but also to qualify for guaranteed student loans and grants, food stamps, federally subsidized housing, and the lower tuition fees available only to United States citizens, legal permanent resident aliens, and state residents.

A number of marriage fraud rings have been uncovered that deliberately attempt to avoid INS scrutiny by flying the United States citizens overseas to marry the alien and file the necessary petitions before the American consuls. The spouses only meet at the court, and see each other for the time necessary to marry and drop the papers off at the consulate.

These spouses do not have to attempt the appearance of cohabitation because the United States citizen immediately returns home. Rings exploiting (or supplementing the incomes of) military personnel stationed overseas operate similarly by avoiding INS scrutiny. The added inducement for an alien to enter into a sham marriage with a serviceman stationed overseas is that the alien may apply for naturalization immediately upon entry to the United States.

RECOMMENDATIONS

First, we urge that the sense of the Congress be expressed that marriage fraud is a serious crime, and that prosecution of the facilitators of this type of fraud--both the arrangers and the participants--be encouraged under existing statutes.

Marriage and fiance fraud are not victimless crimes. The "innocent" United States citizen or permanent resident spouse in a "one-sided marriage fraud" may be duped, hurt financially, or destroyed psychologically. More significantly, however, the participants in these and the "contract fraud" marriages gut the Immigration and Nationality Act by facilitating the entry of aliens who are generally being excluded for good cause.

Most aliens are ineligible for visas because they have flaunted the law: through illegal entry, as a visa abuser, as an illegal worker, as a prostitute, criminal, narcotics violator, or terrorist. (A recent joint FBI-INS investigation of Sikhs suspected of involvement in terrorist and subversive activities disclosed that two of the five individuals arrested were involved in sham marriages. One had already acquired immigrant status, and the other was in the process of seeking permanent residence through a marriage contracted immediately after he was arrested as an illegal alien.) The aliens then go on to violate the law again by entering into a fraudulent marriage to fulfill the letter of the law, though not its spirit.

Marriage fraud, like the trade in fraudulent identification documents, is a thriving cottage industry in the underground economy. Marrying an

illegal alien is viewed as a great way to quickly and painlessly earn a several hundred tax-free dollars, and perhaps even visit a foreign country for a few days. The illegal alien who is caught may be deported; the permanent resident or United States citizen spouse is rarely penalized--even if identified as an individual who has participated in questionable marriages on more than one occasion. The arranger who brings these two partners together, unless linked to other marriages, will probably not be prosecuted.

Only aggressive criminal prosecution can serve to deter this crime.

Second, the law must be changed to clearly serve intent. If the reunification of families is a priority of this nation, we should assure that families--and not the paper creation of families--are being reunified. Those who flaunt the law should not benefit by lax language in the Act, but be penalized.

To this end, we recommend that Section 101(a)(15)(K) be amended so as to qualify the beneficiary of a fiance petition only if he and the petitioner have personally met prior to the filing of the petition. It should also be amended to indicate that marriage can only be contracted with the petitioner in order to adjust status under Section 245 of the Act. The law must specify that the conversion mechanism is via adjustment of status, not simply through an automatic recordation proceeding. We also strongly urge that fiances, like other spouses, be made subject to the two year conditional entry provisions described below.

Third, we believe the marriage relationship must be statutorily defined. We recommend that Section 101(a)(35) be amended to specify indicia of what constitutes a marriage recognized for the purposes of conferring an immigration benefit. Such indicia must include cohabitation after the marriage and after the petition is filed, and viability at the time the permanent benefit is accorded. Viability must be stated affirmatively, not in terms of merely being the absence of a final divorce or annulment decree.

Fourth, we believe that a two year conditional residency requirement for all spouses will best serve to deter fraud. Sections 201(b), 203, 204,

212, and 214 should be amended to newly define immediate relatives, preference aliens, and fiances as individuals who may not be accorded permanent status if their marriage has been in existence less than two years and formed the basis of their eligibility for an immigrant visa.

A new Section 210 is proposed which would provide for a statutory waiting period of two years before a permanent benefit is accorded via marriage. Conditional status, either via adjustment or immigration, will be limited to two years. At the end of that period, the alien must affirmatively demonstrate that the relationship is bona fide before being granted lawful permanent resident status, or he shall be deported. If the Attorney General is satisfied that the relationship is bona fide, the Attorney General shall calculate the alien's period of residence back to the date of initial immigrant entry or adjustment. We believe that the provision needs further clarification concerning factors to be considered by the Attorney General at the end of this two year period to determine whether the marriage was a sham.

Fifth, we believe that the burdens placed on the government to prove fraudulent intent must be eased to assure that aliens who participate in marriage fraud are more easily deported. To this end, Section 241(c) must be clarified to indicate that the burden truly is on the alien to establish that the marriage was not contracted to evade immigration laws, and that the alien's intent at the time of the marriage is not an ameliorating factor. (This will cover those aliens who manage to evade detection at the two year interview, or who immigrated on the basis of a marriage that was already in existence for two years at the time of immigrant entry and thus did not fall within the parameters of new Section 210.)

Sixth, we firmly believe that Section 241(f) should be amended to indicate that no equities can be claimed through a spouse or a child unless that spouse or child resides with the alien and is fully supported financially.

Seventh, we recommend the creation of a new deportation charge, Section 241(a)(20), to mirror the exclusion charge comprehended in Section 212(a)(19). This will render an alien deportable for attempting to

procure a visa or other documentation (such as adjustment of status) by fraud. Currently Section 204(c) only penalizes the alien if he has already received a visa; there is no penalty at present (apart from criminal sanctions) for trying.

Eighth, we believe Section 245(c) should be changed to indicate that an alien may not adjust through a marriage contracted after an order to show cause or notice of voluntary departure has been issued to him. Furthermore, he should not be able to use the marriage to reenter the United States (even under the conditional two year status) unless he has resided overseas one full year.

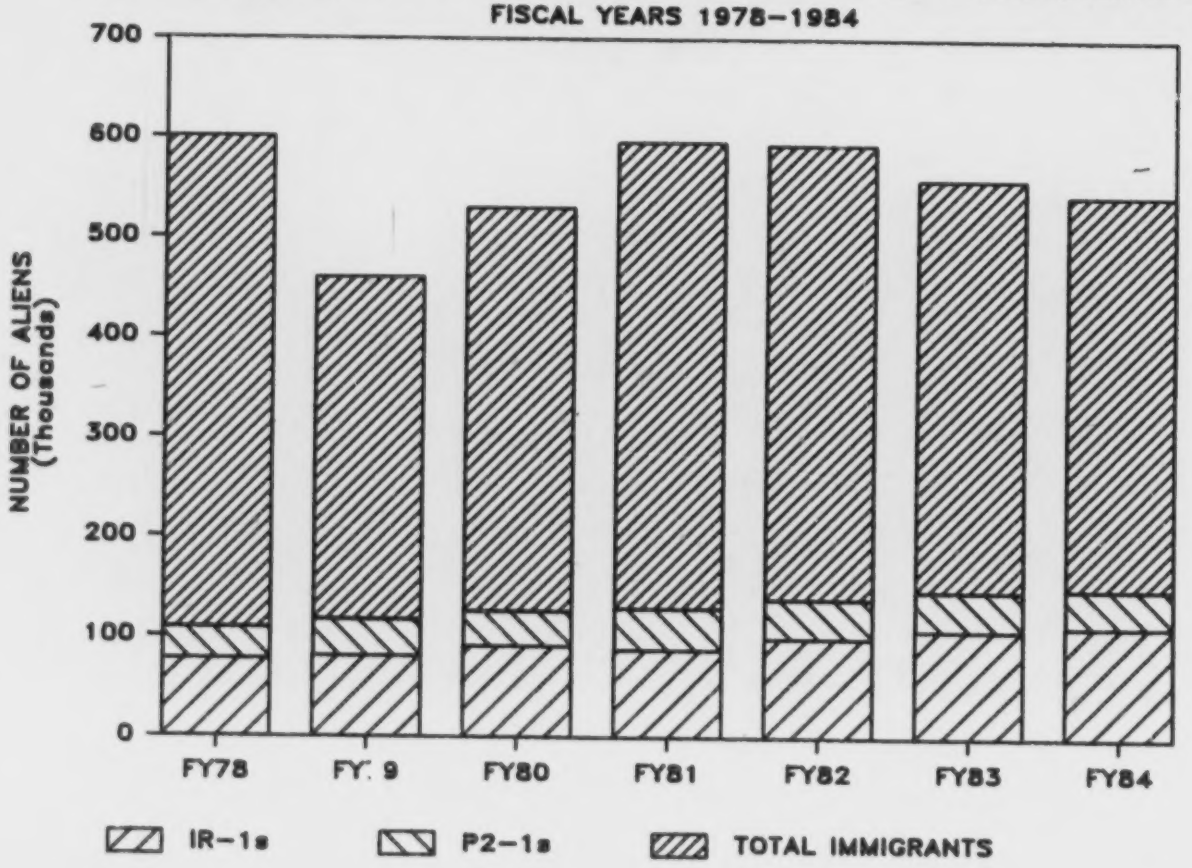
We believe all these changes are critical to deter the use of marriage as a means to delay deportation and thereby avoid legitimate enforcement efforts. We also believe that the integrity of our laws should be upheld in the face of increasing abuse.

Thank you for this opportunity to set this problem before you.

IMMIGRATION TO THE UNITED STATES VIA MARITAL RELATIONSHIPS

	FY1978	FY1979	FY1980	FY1981	FY1982	FY1983	FY1984
Total All Immigrants	601,442	460,348	530,639	596,600	594,131	559,763	543,903
Total Numerically restricted	341,104	279,478	289,479	330,409	259,749	269,213	262,016
Total exempt from Numerical restriction	260,338	180,870	241,160	266,191	334,382	290,550	281,887
Total, second preference spouses of LPRAs	30,958	36,438	35,121	41,814	39,567	39,731	37,643
Total, immediate relatives/spouses of USCs	78,057	80,781	90,887	87,221	99,268	107,349	111,653

IMMIGRATION TO THE U.S. VIA MARRIAGE



Senator SIMPSON. Thank you very much, Commissioner Nelson, and your full remarks will be included in the record, and I appreciate having them. They are very important. And now, please, Mr. Penner, if you will proceed.

Mr. PENNER. Mr. Chairman, I certainly share with you and Senators Grassley and Simon the concern with the problem of marriage fraud, and I welcome the statement by you and your colleagues that spousal petition visas are among the most important forms of the Immigration Act and family reunification is a very important consideration.

I equally share the Commissioner's concerns that it is a type of fraud we have to deal with; that is why I welcome this opportunity, because we in the State Department, the Bureau of Consular Affairs, consider it perhaps one of the most prevalent forms of fraud.

We have prepared a lengthy statement. I would like to submit that also for the record, Mr. Chairman.

Senator SIMPSON. Without objection, so ordered.

Mr. PENNER. And then just summarize our findings here. I am accompanied this morning by Cornelius Scully who is the Director in the Visa Office of our Office of Legislation and Regulations.

With regards to marriage or fiance fraud, we have got two aspects of it. First, it is the fact that it is prevalent; second, the fact that it is extremely complex and problemmatic.

One aspect of this problemmatic nature is that fiance fraud originates in many respects in the United States with U.S. citizens and is initially directed against the Immigration Service.

It is INS, as you know, which has the responsibility for approving and revoking the petitions which accord alien immigrant, or fiance status.

But while the visa process may begin and end with INS, the consular officer overseas has a very, very vital role. We have discussed this role in this paper. In effect the process is one involving the visa issuance.

We have also dicussed in this paper some of the prevalent forms of marriage fraud and fiance fraud that are encountered at our posts overseas.

I might add that it is not just marriage; sometimes it is the concealment of marriage which is fraudulent in itself, to accord an alien a certain type of status under our law.

But in processing the visa applications I would direct your attention to one thing I would like to underscore. The consular officer receives from INS approved petitions, and we begin right then at a screening, at a review process, using what knowledge we have received in training, knowledge of local conditions.

In the beginning some petitions are in fact returned to INS but by and large most fraud is detected and prevented, if it is prevented, at the time of the visa interview.

The consular officer walks a very fine line between invasion of a person's privacy and trying to protect the integrity of the visa process.

In many cases Americans may even be unwitting accomplices to the fraudulent scheme. We have to of course protect those interests as well, but I would like to emphasize how difficult it is for a

person overseas confronted with a situation like that to try to protect both a person's privacy and the integrity of our visa.

I would like to also underscore that we have been focusing on the fraudulent aspects of the visa process for some years now. The Bureau has supported the creation of, at nine major embassies, specific antifraud units, and every major visa-issuing post has an antifraud designated officer.

For a consular officer to take the visa process to its conclusion, either the visa is issued or the visa is denied. There are ways to put it on a hold process, but at some time a visa has to be processed. If proof is insufficient there again it is a problemmatic aspect. Only sufficient proof of fraud must be inevidence before turning to our INS colleagues to pursue the matter further.

So the scope of the problem is made difficult in those two respects primarily. I might also add that in looking at how many of these types of frauds we might encounter, quantifying the problem is almost as difficult as qualifying the problem.

We issue some 70,000 visas at some 225 posts abroad which deal with spousal relations. That is a very large number.

In pursuing this matter, we have informally queried a number of posts overseas. Many of them have indicated that sham marriages and fiance sham things are in fact a problem.

But in summary, we believe that the answer perhaps lies in better utilizing resources presently at our command strengthening both coordination and cooperation with INS, rather than looking at some across-the-board legislation.

Fine-tuning is something that we think is very significant. I would only add that in our legislative section we focus on several aspects that we think might create some concerns.

In particular we have discussed the Bureau's statement, that our own answer may lie less in new programs than in more training, continuing improvement in our information-sharing with INS, and closer operational cooperation with the Immigration Service.

To finally summarize, I would suggest that while we consider this problem a highly significant one, a problem that is growing, we would like to work closer with INS to resolve it. Thank you, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF VERNON D. PENNER, JR.

Mr. Chairman, members of the Subcommittee, on behalf of the Bureau Of Consular Affairs I welcome the opportunity to testify on the subject of immigration marriage fraud for two particular reasons. Marriage or fiance(e) fraud is a prevalent form of visa fraud increasingly encountered by our consular officers abroad. Moreover, it is a form of fraud which is highly complex and problematic in its detection and prevention. Marriage or fiance(e) fraud is especially challenging to the consular officer because much of it originates in the United States and is directed initially against the Immigration and Naturalization Service.

INS, as you know, has the responsibility for approval or revocation of petitions according aliens immigrant or fiance(e) status. It is INS to whom the consular officer turns to investigate stateside evidence, reconsider petitions or follow-up a report of possible fraud after visa issuance. The fiance(e) visa process begins and ends with INS. The vital role of the consular officer falls in the middle of the process. We screen the documents, interview the applicants and issue the visas.

MARRIAGE AND FIANCE(E) FRAUD DEFINED

Marriage or fiance(e) fraud occurs when such a relationship is entered into or concealed for the purpose of circumventing the Immigration and Nationality Act. An objective of the consular officer is to establish that both partners are legally free to marry and that the claimed relationship is bona fide. There are several common types of fraudulent relationships.

Probably the most prevalent marriage fraud is encountered in applications of spouses of American citizens (IR-1 Category) and spouses of alien residents (P2-1 Category). One type of abuse is bigamy with fraud committed to conceal an existing prior

marriage. The petitioning American citizen may or may not be aware that his/her new spouse was not legally free to marry. Unfortunately, this particular fraud may only come to light after permanent resident status has been obtained and the new resident divorces the American citizen and "remarries" the original spouse from the home country. A second abuse is the apparent lawful marriage which was entered into solely for visa purposes in exchange for money or other considerations.

A second type of relationship fraud occurs in the cases of married aliens claiming to be the unmarried sons or daughters of permanent resident aliens who are seeking status in the (P2-2) category. Generally the parent files a petition with the INS claiming that the beneficiary child is unmarried. The beneficiary, in turn, attempts to conceal from the consular officer at the time of the visa application the evidence of an existing marriage. After admission to the United States, the beneficiary may file a petition for the spouse and children remaining abroad.

A third type of fraud involves the fiance(e) nonimmigrant visa category (K-1). Misrepresentations in this category are not dissimilar from the types of fraud which arise in immediate-relative and second preference cases. In addition, applicants for fiance(e) visas may be "Mail-order" brides who have never met their American citizen petitioners.

PROCESSING VISA APPLICATIONS

The Consular Officer is required to screen INS approved petitions upon receipt to ensure the accuracy of information on the petition and accompanying documentation. The officer may note obvious discrepancies in marital status during this first step and return the petition to INS for reconsideration. In the majority of cases, however, suspicions of marriage or fiance(e) fraud occur during the interview process when the beneficiary applies for a visa.

The Consular Officer, when interviewing visa applicants, may draw on area expertise and knowledge of conditions and fraud patterns in the alien applicant's home country. While this specialized skill is useful, the officer must evaluate the facts of the relationship strictly in the context of the specific case in making a determination whether or not to approve the visa application.

Consular Officers find it particularly difficult to handle suspected incidents of marriage or fiance(e) fraud when an American citizen could have been victimized unknowingly by the scam or is a willing party to visa fraud. In questioning the validity of a spousal or fiance(e) relationship, the Consular Officer walks a thin line between protecting the interests of a perhaps unwitting American citizen "accomplice" to a fraudulent scheme, and being accused of invading an individual's privacy. I cannot stress enough how difficult it is for Consular Officers to both protect a person's right to privacy and to protect the integrity of the visa process.

The Consular Officer during the interview might ask where and when the beneficiary and petitioner met, whether correspondence is available showing that the two have maintained contact while the petition was being processed, and details concerning the marriage ceremony. Also, civil documents, such as the beneficiary's passport or previous visa applications, may be reviewed to determine if a previous marriage was indicated. If the Consular Officer notes significant discrepancies during the interview process and the petition or beneficiary does not admit the commission of fraud, the Consular Officer may refer the application to the post's Anti-fraud Officer for an additional interview and/or the performance of a field investigation.

The anti-fraud section might review local church or civil registry records to determine if a previous marriage exists or the section could send an employee to perform a neighborhood check. The investigator will ask the applicant's friends,

neighbors, or relatives about the applicant's marital status in an attempt to determine the validity of the relationship. If the petitioner has remained in the United States rather than accompany the beneficiary to the interview, the Consular Officer has the option of requesting INS to conduct an investigation stateside to ensure the validity of the claimed relationship.

I might add that during the past several years, the Bureau of Consular Affairs has supported the creation at nine major embassies of anti-fraud units which are staffed by FSO's and by Foreign Service National Staff Members. All of our major visa issuing posts have designated Anti-fraud Officers responsible for addressing the fraud problem in their consular districts. Furthermore, the Bureau provides anti-fraud training segments in junior and mid-level courses for Consular Officers at the Department's Foreign Service Institute as well as consular conferences and workshops abroad.

Our objective is to develop conclusive evidence proving a fraudulent situation, such as a marriage certificate showing a bigamous relationship or the execution of a notarized affidavit by a party to the marriage attesting to the commission of fraud. If evidence establishes that fraud has been committed, a report to this effect with supporting evidence and the petition will be sent to INS for its review and determination if the petition should be reconsidered or revoked. Such evidence must be adequate for presentation in a United States court of law should INS's revocation of a petition be contested. I stress that while suspicion may point to the possibility of fraud, the Consular Officer may have considerable difficulty developing the necessary conclusive evidence, particularly without the cooperation of local government officials or the petitioner or beneficiary. Short of conclusive evidence, there is little choice but to proceed with the visa application and ultimately approve issuance of a visa.

SCOPE OF THE PROBLEM

The difficulties in identifying fraudulent relationships and in establishing the hard evidence which would enable the INS to revoke petitions based on fraud also makes quantifying the problem a speculative task. I believe that marriage fraud is a worldwide phenomenon, which occurs to a greater or lesser extent at most all of our immigrant visa issuing posts. A representative sampling of comments from posts which issue immigrant visas illustrate the extent to which the problem occurs.

An embassy in the Caribbean reported that "the sham marriage phenomenon...is the single most popular ploy used by persons seeking to obtain an immigrant visa through fraud." The post stated that fraudulent marriages have achieved "folkloric" proportions and brokers and documenters "supply everything from happy looking witnesses at bogus marriage ceremonies to reusable cardboard and paste wedding cakes that appear in wedding photo after wedding photo." The post estimates that 65% of the cases which have been investigated result in findings of fraudulent relationships.

Fraudulent marriages are increasing in Europe as well, where a growing third-country national community from the Middle East, the Indian Sub-continent and Africa provides the bulk of suspect cases. According to one embassy, marriage fraud cases are relatively easy to spot by the lack of common cultural or religious ties or the brief period of acquaintance prior to the marriage. The beneficiary normally has a good deal more education than the petitioner who is often unemployed or working in a low paying job. Other notable groups sometimes involved in questionable marriages are U.S. military personnel, typically a young male petitioner with a much older beneficiary, and members of cult groups.

Reports from Canada indicate that in a majority of fraud cases, a sham marriage was contracted simply to help out a

friend. Petitioners who admit the fraudulent nature of the relationship have often stated they would not have become involved if they had known that the visa process would take so much time or involve so much travel. One Canadian post estimates that in perhaps 15% of the sham marriages involving female petitioners, the petitioner admits that despite not having lived with the beneficiary nor consummating the marriage with him, she was now in love with the beneficiary and was hoping that the sham marriage would become a "real" marriage after the beneficiary received his visa.

In one Asian country, the beneficiaries of petitions based on bigamous marriages take additional steps to confound Consular Officers and Anti-fraud Investigators and to conceal prior marriages. Visa applicants commonly hide their real names, addresses, ages, children, and occupations. In support of each misrepresentation, they provide either fraudulent documents or genuine documents fraudulently issued by counterfeiters.

SUMMARY

Unfortunately, marriage fraud appears to be a "growth industry," because it is a non-risk proposition for all parties concerned and the fraud is difficult to prove. A Consular Officer abroad is in a unique position to evaluate the approved I-130 petition forwarded by a stateside in office, but developing the conclusive evidence required for remanding a case involving fraud to that INS office for reconsideration or revocation is frustrating, labor intensive, and sometimes impossible. Absent an admission by the petitioner or beneficiary that the relationship is fraudulent, or other evidence to prove fraud which would withstand legal review, the Consular Officer does not have the needed justification to return the petition to the INS.

The State Department issued last year over sixty-nine thousand visas at 225 posts based on marriage or fiance(e) relations. As visa demand increases, I suspect we will see increasing numbers of questionable relationships. We are utilizing every possible resource to prevent marriage fraud. Sham marriages have been the subject of specific anti-fraud bulletins to all posts. We also have continued to stress the importance of strengthening our ties and coordination with INS. Towards this end, we certainly encourage INS to make every effort to conduct interviews, document checks, and, if appropriate, investigations, before giving its stamp of approval to petitions.

LEGISLATIVE CONSIDERATIONS

I will now turn to the specific issues which you have indicated are under consideration. In doing so, I will talk of them in terms of anti-fraud efforts.

First, there is the question of making the initial approval of a spousal petition conditional and subject to further review. As far as I am aware, this would be a substantial departure from previous practice and, while it may be justified as an anti-fraud measure, it will certainly be a highly controversial one since it directs itself to precisely those groups of immigrants who have traditionally been most favorably treated under the immigration law. I assume that the further review contemplated would provide an opportunity to determine whether the marriage had been entered into in good faith or was entered into for the purpose of evading the immigration laws. In considering such a significant departure from existing provisions of law, careful consideration should be given to whether enforcement of existing law might not render the provision unnecessary.

I would comment, as a technical matter, that any such provision should more appropriately be formulated in terms of

limiting and imposing conditions upon the alien's admission than upon the visa petition or immigrant visa. Some precedent for admitting aliens as immigrants but for less than permanent residence may be found in the Immigration Act of 1924. Section 4(e) of that Act defined foreign students as nonquota immigrants but they were not admitted for permanent residence. Rather, under Section 15 of that Act, their admission was to be for such time and under such conditions as the Attorney General prescribed by regulation. A formulation similar to that one would appear preferable for technical reasons.

We are not entirely clear what concept lies behind the suggestion to authorize the Attorney General to review spousal petitions on a "post-audit" basis. Presumably, the alien spouses would be admitted for permanent residence as is now the case, but there would be some post-admission inquiry to determine whether the marriage had in fact been a genuine one.

Both of these suggestions would appear to call for new adjudicating or investigative programs, or both. While I cannot speak for the Immigration and Naturalization Service in this matter, I do not believe that we in the consular field would welcome the addition of such new programs. From our perspective, the answer really lies in enhancing our existing anti-fraud programs, which means, more training, continuing improvement in our information-sharing, and operational cooperation.

Cohabitation of the parties after a marriage ceremony is certainly a factor which is worthy of consideration. Under existing law, regulations, and decisions, the lack of any cohabitation whatsoever is a very strong indication of a sham marriage and will form a substantial basis for the denial of a visa petition or the revocation of a previously-approved petition.

A more difficult question arises when the parties cohabited for a period of time after the marriage ceremony but then ceased to cohabit. It may be in some such cases that the petitioning party entered into the marriage solely to procure an immigration benefit for the alien. On the other hand, there will also be cases in which both parties entered into the marriage in good faith, but one or both eventually realized that it was a mistake. Suppose for example, that the parties ceased to cohabit because one physically abuses the other. In that case, one can say that the abused spouse made a mistake. Such a mistake, however, would not constitute an act of fraud or a sham marriage.

It has been suggested that certain requirements might be added for approval of a fiance(e) petition - a requirement that the parties have met prior to petition filing, that they share a common language and that they have a firm intent to marry.

INS regulations now specify that a prior meeting between the parties be given great weight in the adjudication of a fiance(e) petition. We perceive no objection to making a prior meeting between the parties a condition for petition approval, but only if the meeting took place within a reasonable period of time prior to petition filing. Proof that the parties, now both adults, met years before when both were infants, toddlers or elementary school age children would not be sufficient.

We are concerned about the requirement that the parties share a common language. Clearly, if they cannot communicate at all, it would be most unusual that they could agree to enter into a meaningful marital relationship. On the other hand, we foresee very difficult administrative problems. How fluent must they be in order to "share a common language?" How much English must the alien know to share it with the American? How much Spanish, Tagalog, Chinese, Finnish, French, Swahili, or Farsi must the American know to share it with the alien? While conceptually this is a logical requirement, there is a

likelihood that its imposition would require large expenditures of time and money to administer language testing.

The intent of the parties to enter into a valid marriage after the fiance(e)'s entry into the United States is already an integral part of the law and implementing procedures. In order to qualify for issuance of a fiance(e) visa, the alien must "seek to enter the United States solely to conclude a valid marriage with the petitioner." In the implementation of this provision, the petitioner is required to swear that he or she is legally free to marry the beneficiary and intends to do so within 90 days after the beneficiary's entry. Similarly, the beneficiary is required to swear to the same thing as part of his or her visa application. There is thus already a sound legal basis for denying a petition if it can be established that the petitioner lacks the requisite intent, or for denying the beneficiary's visa application if the beneficiary lacks the requisite intent. We would not object if the statutory language were strengthened but we don't believe that strengthening the language would add anything. Here, as elsewhere, the real issue is the ability to get at the reality which lies behind the representations made by the parties.

As to possible additional penalties or forms of deterrence, the Department has one suggestion concerning Section 204(c) of the Act. That section now prohibits the approval of visa petitions for any alien who was previously accorded status on the basis of a marriage determined to have been entered into to evade the immigration laws. It does not, however, apply to a case in which status on the basis of such a marriage was sought but not obtained because the sham was discovered sooner rather than later. We can see no basis for applying this prohibition only to sucessful shams.

The final two issues -- (1) whether an alien who enters into a marriage after becoming deportable should be allowed to

adjust status and, (2) whether the five-year limit on rescission of adjustment of status is adequate -- are both matters within the jurisdiction of the INS and, consequently, we are not really in a position to comment on either in a meaningful way.

Thank you for this opportunity to present to you our views on this most serious issue.

Senator SIMPSON. Thank you very much, Mr. Penner; very helpful. I would like to go to some questions now of both of you, just a few.

Alan Nelson could you give us your estimate as to how many persons involved in fraudulent or non bona fide marriages may have obtained permanent resident status in this manner, say, in 1984; how many there are?

Mr. NELSON. Yes, Mr. Chairman. First, if I might introduce two people who have joined me up here. Jack Shaw is our Assistant Commissioner for Investigations. Rick Norton who also works with him recently returned from a grant, German Marshall fund grant in Europe, who are active in this, and I might defer a number of these questions to the experts here.

But to answer your question, Mr. Chairman, based on a preliminary survey—and I would emphasize it is that—on marriage fraud, and this is in 3 cities during fiscal year 1984, we believe as much as 30 percent, which is an extremely high figure, of the spouse relationships may be fraudulent.

Now again we are not saying these are hard, but there is indication of a significant percentage and that could mount up to 45,000 individuals who could have received permanent status through non-bonafide marital relationships.

So the problem is clearly significant.

Senator SIMPSON. You mentioned that fraudulent marriage petitions sometimes involve impersonation of American citizens. Could you elaborate for me a bit on that, impersonation of American citizens?

Mr. NELSON. By agreement with Mr. Shaw, Mr. Norton, if you would answer that.

Senator SIMPSON. Either one there. I am going to have Dick Day come down. He was one of the Marshall fund winners, along with you, you know, Mr. Day, the chief counsel, but since the immigration bill has come up, we had to scrub his tour in August, one of the failures of the system. Please.

Mr. NORTON. Our problem is that there are thousands of jurisdictions that issue the various documents that can be used in support of the visa petition to show that you are a U.S. citizen, for example, and able to petition for an alien spouse.

With this multitude of documents, the ability to counterfeit them presents us great hurdles. We have had a case in Newark, NJ, for

example, where over 200 counterfeit documents showing U.S. citizenship were used in support of these visa petitions. In many cases, the documents were used by illegal aliens posing as U.S. citizen spouses.

Senator SIMPSON. So that is the impersonation that you described, that type of thing?

Mr. NELSON. Yes.

Senator SIMPSON. And this is one incident you speak of?

Mr. NELSON. Well, there are many also. We have had other examples where people have posed as U.S. military personnel overseas, and not actually being so, but acquiring counterfeit documentation again, indicating that they are able to petition, as military personnel, for persons to join them back in the States when they have finished their tours overseas. But it is a problem we have many examples of.

Senator SIMPSON. And they actually present themselves, perhaps in uniform, or whatever that may be, at that time; is that correct?

Mr. NELSON. Oh, yes, and apparently official documentation showing their status on the military base. It is quite thorough documentation. We have even had completely fraudulent immigrant visa packages, including the face sheet of the immigrant visa itself, based entirely on counterfeit documentation stemming from that original posing as a U.S. citizen.

Senator SIMPSON. And of course, just for the record, you might share with us just what the benefits are to a U.S. serviceman with regard to special immigration benefits. Would you please relate that briefly, the special benefits that go to the spouse of a serviceman.

Mr. NORTON. Well, of course, they are entitled to benefits as the spouse of military personnel: on-base billeting and various health care benefits, and support by other means, as is common with many persons who acquire permanent residence through this type of arrangement.

If you are illegally in the United States, of course, you are not normally entitled to many entitlement programs, receipt of Social Security, supplementary income benefits, for example, or unemployment compensation.

However, if you do pose, or do acquire permanent residence on the basis of this fraudulent relationship, you do become eligible for all these benefits.

Senator SIMPSON. And of course swift naturalization is also a great benefit, is it not?

Mr. NORTON. Yes; especially in the case of military personnel who can have their spouses naturalized virtually immediately after acquiring permanent resident status.

Senator SIMPSON. Did you have any comment on any of that, Mr. Penner, any of this?

Mr. PENNER. Well, I would only say that obviously, in not every immigrant visa interview is the petitioner present. I would certainly hope that when you have a petitioner impersonating an American citizen, this is one thing we would certainly hope to examine at the time of the visa interview, if the petitioner was available.

Mr. NELSON. I might just add, Mr. Chairman, that obviously interrelationship of all of these aspects of immigration and immi-

gration reform, we need to control our borders but part of the problem is, when illegal aliens get into this country, whether they cross the border or whether they come in fraudulently through a fraudulent marriage, is that they can access themselves to jobs which they are not otherwise entitled to, or to the benefits.

And as we know there are millions and millions of dollars in this country, and all the benefits that Mr. Norton indicated, plus others, that are accessed by these people, and that is one reason, of course, we are pursuing the SAVE Program to screen out illegals from improperly drawing benefits, and we are pleased with the efforts there, but this marriage fraud and other fraudulent activities tie into that problem.

Senator SIMPSON. Well, of course there are the benefits that accrue to the serviceman overseas, and then there are the benefits that accrue here in the United States to the spouse with regard to any number of Federal entitlements, and what are those here in the United States, just very briefly, the benefits that become available?

Mr. NELSON. I think Mr. Norton hit a number of them, and obviously you have got the Social Security, the supplemental security income, SSI, unemployment compensation, HUD-subsidized housing, the AFDC Program, food stamps, numerous Department of Education-funded programs including student loans and opportunity grants.

You have got Small Business Administration loans. Mr. Norton has already hit the military, and there are probably others there, but there is quite a panoply of various social benefits that are available out there for people who have no right to obtain them.

Senator SIMPSON. Let me ask you this: You mentioned that it is particularly difficult for the INS to prosecute cases of one-sided marriage fraud in which an American citizen has been duped or deceived by an alien spouse.

If the citizen comes to the INS and is prepared to testify that the marriage is a sham, or was a sham, so far as the alien was concerned, from the outset, why is there this difficulty? Why is that?

Mr. NORTON. Well, as the law states right now, at least on the surface in section 241(c) it appears as though, if that is the circumstance, the alien must then prove that the marriage was not entered into in order to acquire the immigration benefit.

However, court precedent does not allow us to proceed in any sort of a proceeding against the alien, unless we can go back in an investigation, and establish that at the time the marriage was entered into, that fraud was intended by the alien. This means that we have to place ourselves inside the mind of the alien. If they concealed that fact to the U.S. citizen, or never discussed it with anybody that we find as witnesses, then it is impossible for us to establish that the intention was solely to violate immigration laws. This situation exists notwithstanding anything that may have happened since the marriage that caused the divorce or separation, the dissolution of the marriage.

Senator SIMPSON. Let me ask just one other question and then I will go to Senator Grassley. I will ask this of Mr. Penner and then come back for just a couple more, and then we will go on.

The marriage fraud and the U.S. serviceman, we are discussing here, and I would like your views on it as to the extent of the problem and what is involved there, and for example, where does this fraud mostly take place in the world, internationally, and are U.S. servicemen often knowing participants, or sometimes unknowing?

I would like your thoughts on that, please.

Mr. PENNER. Well, certainly the fraud would occur most logically where U.S. servicemen are stationed overseas. That is readily apparent. During my most recent service in Europe, we worked very closely with military authorities to ensure that the U.S. servicemen—and it is no longer just men but women who marry overseas, of course—were aware of all aspects of visa requirements when they in fact enter into a relationship.

We worked with military authorities, chaplains, and what we call the civilian personnel officers. In effect there was a military clearance process of the spouses in Germany, and that was, I think, a strong deterrent to some of these frauds that we are talking about. In the time that was permitted us before these hearings, we made informal soundings of our posts overseas. Several in Asia in fact said yes, this is a concern, and yes, there are servicemen who are either unwitting dupes or in fact may be entering into relationships for sums of money.

We try of course to weed these things out. From my experience in Germany, I would hope that posts are working with military authorities.

Part of the answer is also working with immigration authorities.

Senator SIMPSON. I would think that the place of the largest problem would be areas where there is the largest backlog of legal persons waiting in line. Is that not so?

Mr. PENNER. Well, certainly those backlogs create pressures and pressures create temptations, and temptations give us fraud, that is correct; and if you couple with those areas, areas where there are also servicemen stationed, or servicewomen, then in fact there is——

Senator SIMPSON. Such as Korea, or the Phillipines, I would think that that would be heavy.

Mr. PENNER. That would be correct, Senator.

Senator SIMPSON. Mr. Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. Mr. Penner, you spoke in terms of correcting the problem by fine-tuning. Mr. Nelson, you spoke in terms of eight changes needed in the law.

Now, do we have one administration position here, or two, or do we have no position on the part of the administration as to how to solve this problem? Is there still debate going on within this administration on how to take care of this problem?

Mr. NELSON. I will take a shot at it and let Rick pickup on it. I think we are consistent. I think obviously, this is an area——

Senator GRASSLEY. Well, it seems and—maybe I misread Mr. Penner, but it seemed that he did not want any change in any statute.

Mr. PENNER. I referred to actual finetuning of what statute is available. Perhaps I was unclear in my testimony, Senator.

Senator GRASSLEY. Well, do you consider his suggestion——

Mr. PENNER. Well, I would actually have to review it and get back to you on that.

Senator GRASSLEY. All right, I may have misunderstood Mr. Penner slightly, however, my question I believe still is valid. What is the position of the administration?

Mr. NELSON. I think, Senator Grassley, of course this hearing is a real kickoff on this issue. The problem has not been addressed, publicly, as it should be, and I think with our respective testimony, it is an indication we are all together in looking for a solution.

There is no absolutely clear way. We think the recommendations we made are solid. I do not really see inconsistencies between the two departments, so I think we are really on the right track.

A lot more work needs to be done, and again, as I say, I see this as a good kickoff, and I am sure we will work very effectively——

Senator GRASSLEY. Well, do you anticipate as a result of this hearing, that there will be a formulation of a policy in this area by this administration?

Mr. NELSON. I think that is already underway and of course a lot of the administrative action ties into that, too. It is not strictly legislative. It is a combination of both.

I think that public attention to this is important, and I think we are on that track and we certainly will continue on that track.

Mr. PENNER. I would not be so optimistic as to say "solving this problem." I think the problem will always be with us, but I think doing a better job of what we are trying to do, that is certainly in our power.

Perhaps you would like to hear comments on this in terms of the legislation.

Mr. SCULLY. Senator, if I may, in our statement we raise what we think are some points that need to be looked at in the formulation of actual legislative text. We were made aware, a letter was sent to us, indicating that in a general way, certain sorts of ideas, or suggested directions for legislation, possible legislation, were under consideration, and we have addressed our comments in our opening statement to the suggestions that were thrown out, not precise legislative text, but in essence, suggestions for possible types of legislation.

There were a couple of those that we felt there were some factors that needed to be explored more fully, such as in the statement, we talk about this notion of requiring that the parties to a fiance petition share a common language.

It seems to us there are some things that need to be thought about in terms of how one would formulate that, so we tried to set those out in the statement.

That does not necessarily mean that we would oppose, conceptually, that sort of a requirement, if it was decided that that was an appropriate thing to add to the legislation, but I do think that one needs to understand some of the administrative problems, the practicalities that would arise if one does that, and that is what we were attempting to do in our statement, was to lay out some of those things.

Senator SIMPSON. Let me ask just a couple more questions and then we will move on, because you both talk about a conditional, and placing of conditions, and conditional restraint. Would not the

creation of conditional resident status of the kind that you recommend, Mr. Nelson, result in a tremendous workload increase for the service? I will ask you that.

Mr. NORTON. We do not believe so. First, only those aliens who have been married less than 20 months would be subject to the provisions that would require us to review their cases. Second, not all those would be required to appear for interview. We would go through a screening process and determine which cases had to go forward for an actual physical interview.

The Service believes that the statute will effectively deter the submission of fraudulent applications, too, which will result in a net decrease in the number of applications filed.

Senator SIMPSON. Would not that kind of a conditional resident status actually lead to a kind of downgrading of the status of a spouse, then, of an American citizen?

Mr. NORTON. We feel it would not. First of all, we are proposing that the period of temporary residence be retroactive, that if you are determined to be in a valid relationship, that you would not start the clock ticking on your period of permanent residence, but would be retroactive to the date of initial entry or adjustment on the basis of the marriage.

Second, there would be no distinction in the type of documentation carried by the temporary or permanent resident, only perhaps an expiration date on the card itself, that would be renewed after the status is determined to be viable.

Senator SIMPSON. Mr. Penner, you suggest placing those type of conditions on the alien's admission and not on the visa petition or immigrant visa. Could you explain briefly what you mean by that suggestion and your reasons for preferring that?

Mr. PENNER. Certainly. Let me defer to Dick Scully on that.

Mr. SCULLY. Senator, this is a technical matter. Under the law as it stands now, all immigrants are admitted for permanent residence, and the petition and the visa are essentially—the petition is essentially used up in connection with the issuance of the visa.

The visa has been used in connection with the admission. So if you want to establish this condition subsequent, it seems to me as a technical matter, it needs to be established on the admission, because if you admit the alien for permanent residence, then the conditional nature of the visa or the petition is irrelevant, if in fact when the alien arrives at the port of entry, the alien is granted admission for permanent residence.

What you really want to get at here, mechanically—this is a very technical thing, it is not a substantive thing—but it seems to me, technically, if you are going to establish this kind of requirement, what you want to do is something analogous to what was done under the 1924 act for students.

They were admitted as immigrants but they were not admitted for permanent residence. They were admitted for time limited periods under conditions established by regulation. Now, one could admit the spouse's or fiances in a conditional status or a time-limited status, under conditions that were established either by statute, or by regulation, depending on how the Congress chose to do it.

But it seems to me that as a technical matter, it is preferable to establish the conditions, of the kind the Commissioner is talking

about, on the admission, rather than on the visa issuance or the petition because those are transitory documents anyway, whose life ends when the alien is admitted, and that essentially is just a technical issue, sir.

Mr. PENNER. If I could only add, Mr. Chairman, from a procedural standpoint I would not like this kind of secondary examination or conditional entrance to in any way detract from the necessity to investigate and carefully review every application during the initial application process.

I would not like this second stage approach to detract from the importantance to us in the consular field, of carefully reviewing at the time of application each visa and each visa applicant.

Senator SIMPSON. Is that the postadmission inquiry that you speak of? Is that what you are saying?

Mr. SCULLY. In either form, Senator, I think. I think one of the things that we—Mr. Penner and I were discussing this—as we see it, assuming these conditions might be established by law, we do not see that that would or should in any way diminish the adjudication, and any necessary investigations that might be associated with the initial application process, either with the initial petition approval process, or the visa issuance process.

I think one of the things that one might get led into is the notion, ah, well, if this is all going to be dealt with after 2 years in any event, there is not as much necessity to pursue inquiry and investigation, and adjudication, initially, in the petition adjudication of visa issuance process; and it is our view that even the establishment of these subsequent conditions will not in any way detract from or modify the process that we currently go through, and that is the point.

Senator SIMPSON. Well, you know, I just want to be sure that when you are talking about this later inquiry, or postadmission inquiry to determine whether the marriage is genuine, I gather that the consular service is not welcoming that and yet it is my understanding that the INS does prefer a process which might entail such an inquiry. The State Department then would not be involved and I would like to see the two agencies of Government discussing that, and sharing with me your views as to how best that might be coordinated. That would be very important to me and I wonder if I could inquire and request you to do that, and give me a kind of a memorandum on that, or, a white paper.

Mr. NELSON. We will do that, Mr. Chairman.

Senator SIMPSON. I would really appreciate that because I see that distinction.

Well, I want to thank you very much. You have kicked us off on what I think is going to be of very great interest to us all. Thank you so much.

Now the next panel, Ms. Amita Narielwala and Ms. Patricia Beshara, and Mr. Jose Caringal, and Ms. Nancy Marrero. If you would come forward we would certainly appreciate hearing from you.

It is deeply appreciated that you would come and share your very personal experiences, the things that have happened to you with regard to this area. The information we are seeking is to perhaps make some corrections in our laws, and I know that you have

really not submitted any kind of written testimony. That is most pleasing to us here sometimes, they get quite bulky, and so I will ask to receive your testimony through some questions that I might ask, so let me just proceed there.

Please know that this is an informal proceeding. It is not a court hearing. We are not limited by the rules of evidence but we are certainly limited by the rules of good taste, and I always try to observe those. This is not a probing personal thing but the things that you would share will be very important to us.

STATEMENT OF A PANEL CONSISTING OF AMITA NARIELWALA, ALEXANDRIA, VA; PATRICIA BESHARA, NEW YORK, NY; JOSE CARINGAL, GARDENA, CA; AND NANCY J. MARRERO, PHILADELPHIA, PA

Senator SIMPSON. So Ms. Narielwala, I understand you are an American citizen of Indian origin, and that in keeping with the common practice in India, your family then arranged your marriage with a young Indian doctor, and that you returned to India for that marriage on June 15, 1982.

And that after your husband obtained his immigration visa at the consulate in Bombay, then there was a change in the relationship, change in attitude toward you, that became very evident, and if you would please share with us exactly, the circumstances of that, we would appreciate hearing that

Ms. NARIELWALA. Sir, after we got married in 1982, we went to the consulate in India a day before our marriage to apply for a visa. Two days after our marriage we were given—he was granted a visa to enter into this country. At the time of the marriage, the day after the marriage, once be received his visa, his attitude changed completely to the point where he did not want to have anything to do with me.

Senator SIMPSON. Had you concluded that?

Ms. NARIELWALA. Yes, sir.

Senator SIMPSON. His attitude changed completely and he wanted nothing to do with you at that point. And when you entered the United States, then, on August 2, 1982, and your husband was granted immigrant status, what then was his attitude toward you?

Ms. NARIELWALA. Well, once we entered into the United States—he is a psychiatrist—his attitude, you know turned completely to be professional and he disregarded our personal life completely, went off to obtain a job in the United States. Then he left me in October, so we had been married 3 months.

He left in October and in January, was the first time he called me, and let me know at that time that he had married me for a green card, and he had nothing—he did not want to have anything to do with me.

After that, he has changed his address, and so I could not locate him, and we had to hire a sheriff who located him for us, and I delivered an annulment paper which was based on marriage fraud. The courts disregarded that, and I sent divorce papers, which he disregarded.

And I have been to INS, Senator Heinz, Senator—I have spoken to your committee. I have spoken to Congressman Goodling. I have been to INS at least 50 times, putting in requests, asking them to look this matter over, and have had no results.

Senator SIMPSON. So several months after your marriage then, your husband left you in Pennsylvania to look for a medical residency, and then he left, and he returned, and he indicated to you that he had married you only for the purpose of immigration, is that what you are saying?

Ms. NARIELWALA. Yes, sir.

Senator SIMPSON. And said that it was for the purpose of getting a green card?

Ms. NARIELWALA. Yes, sir.

Senator SIMPSON. And when you asked to join him down there in Texas, what was his response to that, since he had found a job? What did he say?

Ms. NARIELWALA. He said that "I no longer required your support, or your family's support. I'm a doctor, I can earn my own way," and thanks for the ticket to America, basically.

Senator SIMPSON. And did he ever indicate to you his knowledge of the worth of that green card? In other words, that once he had it, that was it and he was quite able to carry on and it would never be taken from him?

Ms. NARIELWALA. Yes, sir.

Senator SIMPSON. Was that true?

Ms. NARIELWALA. He stated it more clearly than that. He said that he has, he has what he calls the green card which is the only thing he needs to live in this country, and there is nobody that can take it away from him, and if he holds off divorcing me for 2 years, then INS cannot get to him.

Senator SIMPSON. Do you know what your husband's immigration status is now?

Ms. NARIELWALA. He is getting ready to apply for his citizenship because we have been married for 3 years and still have not—he still has not agreed to a divorce.

Senator SIMPSON. And do you know whether he is a citizen as yet? You are not aware of that?

Ms. NARIELWALA. I am not aware of it.

Senator SIMPSON. Yes. Since the subject of the hearing is indeed fraudulent marriages, let me come back to the point: What further detail can you furnish the subcommittee about his indicating to you that he married you only for the green card? Anything more to add to that?

Ms. NARIELWALA. Sir, I did find a letter that he had written to his parents, and in the letter it basically stated—he had written it to his parents and was getting ready to mail it when I found it—and it stated that "I have married you to obtain a green card," or "I have married her to enter into this country, primarily as a doctor, and I am hoping to call all of my family here and build our empire."

And so he will get his citizenship and bring his family here.

Senator SIMPSON. He said—those were the words he used in the letter, "to build the empire"?

Ms. NARIELWALA. Yes, sir.

Senator SIMPSON. I think that sometimes American citizens also forget that a person using the legal immigration systems of the United States, and petitioning for relatives who are not in the United States, can bring in relatives as—I don't want to use the word remote but I will, because the American citizen, I think, thinks of a, "cohesive family" or "nuclear family" as spouse and children, minor children; but to an Asian, it is the spouse, minor children, parents, brothers, sisters, and we have a preference called the fifth preference, which is brothers and sisters of adult U.S. citizens. And I do think we have a recordholder in that area, one person who petitioned for 64 derivative relatives. That may be called building the empire I think, and indeed, it is real. But that in essence is what he said?

Ms. NARIELWALA. Yes, sir. My personal feeling is that I have received no help, no matter how many trips I have made to INS, and their reason is backlog. They are saying they just do not have the people, and that our case is, my case is falling, in their priority list, on the bottom because it is over with, and they can stop bigger and better things. And I feel that just as justice in this, not to make this happen again, that they should set an example, that this cannot be done all the time.

Senator SIMPSON. Indeed. Finally, a question: Do you have any suggestions for this subcommittee as to how to deal with this problem? I would like your views; I really would.

Ms. NARIELWALA. I think that a stricter law should be made, one that aliens are afraid of, to follow, you know. They are afraid that if they come here and they do something like this, there is definitely a great possibility of deportation, which is not there at this time.

Senator SIMPSON. In other words, they just scoff at what would happen if they are apprehended?

Ms. NARIELWALA. Yes.

Senator SIMPSON. And we should tighten the penalties then for this type of conduct. Is that correct?

Ms. NARIELWALA. Yes, sir.

Senator SIMPSON. And of course we get into sensitive areas of cohabitation, did the parties live together? How long? How long have they known each other? You get into the personal aspects and that is what makes it difficult to legislate in such an intimate situation. You agree with that?

Ms. NARIELWALA. Yes, sir, I do, but when the evidence is so clear as to the fact that he only stayed with me for a month and a half, it—you know—I can understand if it was 2 or 3 years and then I came up with this—that it was a month and a half before he left me, and he has told numerous amount of people that be married me for this reason.

Senator SIMPSON. Thank you very much, and now, please, some questions to Patricia Beshara. You live in New York, and you might just share with us, if you wish to narrate your situation.

Ms. BESHARA. Well, if you think her situation was bad, wait until you hear mine. I am here because I think there is much more of this that goes on than anybody remotely imagines. I know many other cases of people like the young lady, and myself, who are defrauded, deceived, and it is not easy to get up and make this state-

ment—you feel like a fool—and many people do not want to do that.

They are not so eager to say, look, I was taken in by some man, and also men who are taken in by some women. I have a similar story. I was working in Italy, teaching English in an American school. I met an Egyptian who was the cook in a little trattoria where I ate in the neighborhood. This was in 1980. He started asking me out. He had, I realized in retrospect, ascertained that I was American, that I planned to go back to my country, and that I was not married.

So he started asking me out, and to use an old-fashioned word, courting me. He could not have been more wonderful. I do not know what your initial experience was, but, I mean, the flowers, the gifts. He did not want to go anywhere without me. He was the perfect companion.

Any suspicions that I might have had were alleviated, and even my friends in Italy said, "Patricia, this man is so wonderful; I mean, really, you have just picked a winner."

This happy state of affairs continued until we got married. We were married in March, and because we were two foreigners in a foreign country, it took a while to process the documents.

He wanted to leave immediately and I did not. I still did not get the picture that I had been married for fraudulent reasons. I said why do we not wait until the fall, the weather is nice, it is easier to find an apartment.

No; he wanted to leave right away. So the minute we had all our documents in order, we came to America. I am not exaggerating, if I tell you that the minute I got off the plane, almost, my life changed.

I lived in what I can only describe as a nightmare. I could not understand. My husband had become another person. It was like Ingrid Bergman in "Gaslight." I did not know what was happening, because I was basing my reactions on this man who had been so wonderful to me. And we came to America, and my friends were welcoming us and giving parties. He was sullen; he would not show up; he would not talk to me. I spent most of my first month job hunting and crying.

I did not understand what was wrong. A few months passed. My husband got work as a cook. I worked for the New York Times during the day; he worked as a cook at night. We rarely saw each other which suited him fine. He had one night off a week and he would instigate an argument, and walk out, and say, "You learn, you learn," and he would leave me.

So our return to America first was quarrels, and abuse, and then it became neglect. A few months after we were in the States I was leaving our apartment, and a strange woman came up to me and she said, "Are you Mr. Beshara's wife?" and I said yes.

And she said, "Well, I want to tell you I have been having an affair with your husband for 3 months." The affair started apparently within 2 months of our arrival.

The first month we did not even have an apartment or jobs. He picked her up on the street, told her that he was single, started an affair with her, took her to relatives of his in New York who had no idea that he even had a wife, that he was married, and present-

ed her as his fiance. They also went to this particular young woman's family and presented himself as her fiance. Because I worked during the day and he worked at night, he invited her into our apartment during the day, and at some point she saw some mail addressed to Mrs. Beshara, and she said, "Well, you're not single; you're married." And he said, "Well, I met her in America and I married her to stay in this country. I only have to stay with her 6 months, and in December I'm leaving her and we'll get married."

He did not leave me then. I mean——

Senator SIMPSON. Now he told that only to her. Did he ever tell that you to?

Ms. BESHARA. She told me this.

Senator SIMPSON. I know, but did he ever tell you that very fact, that he married you——

Ms. BESHARA. Oh, yes, later. Yes; and he was much younger than I was so he used to call me up. He laughed. He called me up and said you're too old, I want someone younger; you are too old for me. You know. I want a family.

And before we were married, I said you know I am older than you, I am about 15 years older than you.

It doesn't matter; what's in my heart is the only thing that matters; I don't care; I don't want to talk about it; I love you so much.

He had affairs with about, I discovered, at least 20 women in the first 3 months of our marriage. He broke my jaw in three places. I had to have my mouth wired together for 7 weeks. I had to call the police twice. He threatened me with a knife. And at the finish, after some months, he cleared out our joint bank account, left me with $64, the rent unpaid, and when I said to him, "What am I going to do?" he said, "Sleep in the street; I don't care."

I was involved in some kind of nightmarish situation. I went to the Immigration and I asked them to take some action against my husband and they said that there was really nothing that they could do.

I had to have proof that he had married me for a green card. He had told me, but they needed proof other than that. So I went scouting around to find people. I finally did—the original woman who had the affair, whom he told he married me for a green card, was kind enough to testify for me.

I had four witnesses. I had a terrible time at the Immigration, and it is not their fault; they are very depressed people because there is nothing—they do not have the manpower, they do not have the money, and they hear cases like this every day. It is really tragic.

I took 2 years with Immigration. I got depositions from people, and it is hard to get that, and then Immigration said I had to get another set of depositions, that these people would agree to testify in a court hearing.

And I am not blaming Immigration because—the laws are such, that it is almost impossible for them to do anything about cases like this young lady and myself, and that is one reason nobody hears about it, because they are not prosecuted, nobody knows what to do with them, and they are swept under the rug, and they are very numerous.

The New York Immigration Office told me they have two to three cases like mine every day and usually they do nothing because they cannot.

I was angry enough that I made the effort to do the work to get the witnesses, to get the depositions, and I was fortunate. After 2 years there were hearings in my case.

My husband was issued an order of deportation and he told me after that, "I don't care," he said, "Nobody takes my green card." He said, "Not President Reagan, he takes my green card; nobody can touch me."

And he said, "Anyway, if you throw me out, 100 women will bring me back." That I do not doubt.

However, I have not gotten a divorce, in my case—unlike yours—because I understand from Immigration and from my own lawyer, that if I divorce him, he can indeed find someone to marry him "like that" and then claim hardship, then he cannot be deported because he has a wife who will need his support in this country.

I would just like to say one thing: When I went to Immigration and I said this man had 20 affairs, he broke my jaw, he stole all my money, they said, "Any marriage can be like that." And I, I just—their hands are tied. There is nothing—you know—I just think the law should be tightened. The thing about the 2 years I think is an excellent idea.

I know many other marriages of this nature and in no case do they ever last 2 years, or usually even 1 year, and that would do, go a long way toward alleviating some of this, I think.

Senator SIMPSON. Let me ask you just for the record: We want to establish when and where you were married.

Ms. BESHARA. I was married in March 1981 in Rome, Italy.

Senator SIMPSON. And please describe when he personally first told you that he had married you only for the purposes of obtaining a green card for his own immigration purposes.

Ms. BESHARA. A few months after our arrival in the States, at some point, he let that slip out.

Senator SIMPSON. And you do not recall that specifically. But he told you personally? I want to establish that.

Ms. BESHARA. Oh, yes, yes. He told me personally, he did not want the marriage. After he cleaned out the bank account I said I want the money back. He filed for a divorce and he said, "You give me a divorce and I will pay you your money back." I did not give him the divorce and I still have not gotten any of the money back.

Senator SIMPSON. You have not divorced him at this point, have you?

Ms. BESHARA. I have not because if I divorce him he can marry someone else and it will be very easy for him to stay, and so I am not divorcing him at this time. He said that to me. He said, "I want the divorce and I can find other women to bring me back; you're not going to throw me out."

He has now appealed. After 2 years of this case, and 4 hearings, finally, they did issue an order of deportation. He has mounted an appeal.

I talked to the New York Department of Immigration before I came, and they told me this could give him another 6 to 9 months

to a year, and he can then mount another appeal after that, if he wants.

I feel very strongly, Senator Simpson, that the message is out that the way to stay in this country is to marry an American woman. That is the easiest way.

I have a new job. I left my office the other day—no one knew why I was coming here—but a young man in the office, who is not an American citizen, and not knowing my story at all, said to me, "I don't know if I want to stay in America or go back to my country," he said, "but I don't want to marry an American woman like everybody else does. I don't want to do that, like everybody else does." The message is out that this is the way to stay in America, and I think we have got to send another message out.

Senator SIMPSON. Well, you have certainly sent a message here I can tell you, and I appreciate it very much, and your recommendations then to the subcommittee are to tighten the penalties for this kind of conduct, and to make some kind of conditions on that, as I hear what you are saying?

Ms. BESHARA. Yes.

Senator SIMPSON. And that it is very prevalent and much more prevalent than we think, in the United States?

Ms. BESHARA. Much more.

Senator SIMPSON. I do believe that. I have said since I have been on immigration and refugee matters, that there is a communications system that goes out through the world which beats Ma Bell to shreds.

Ms. BESHARA. Absolutely. I just—last year when your bill was up, the Simpson-Mazzoli bill, I had an Egyptian acquaintance, and he said to me, "They're passing the bill. We all get amnesty; everybody stays." And I said, "Don't be too fast, because only one part has passed the bill; it hasn't been completely passed." Later, when the bill did not pass, I spoke to this same man, and he said, "It's all right; everybody's married."

Senator SIMPSON. Well, I tell you, you have certainly shared some provacative material with us. I really appreciate it very, very much, and for all of you to expose your vulnerability here is—you phrased it better than I ever could. Now, please, Mr. Jose Caringal.

Let me say about Mr. Caringal. He is a permanent resident alien of the United States, who worked for a lawyer who is in the business of arranging marriages. That was the purpose of this lawyer's activity, arranging marriages of aliens to U.S. citizens in Los Angeles.

And then Mr. Caringal became a witness for the Government in a successful prosecution of the lawyer in Los Angeles. Mr. Caringal, when did you first come to the United States?

Mr. CARINGAL. I first came to the United States some time in June 1979.

Senator SIMPSON. When did you begin work for the lawyer who was the arranger of marriages, a Mr. Aquino? When did you begin work for him?

Mr. CARINGAL. I started working for him some time during the latter months of 1979.

Senator SIMPSON. And how long did you continue to work for him?

Mr. CARINGAL. The first time I worked for him was, as I said, the latter months of 1979 to May or June 1980, and then I was laid off for about 3 months, and on the latter month of 1982, June 1981, I worked for him again.

Senator SIMPSON. And what was it that you did for him? Would you describe that, please, for the record.

Mr. CARINGAL. OK. I was the legal assistant in the law office and I did the leg work and the work in the office for this lawyer, and when aliens would consult the office, they will be advised that the easiest way to stay permanently in the United States is to marry a U.S. citizen.

Now the office had contacts outside, about three people who would provide the office with U.S. citizens for our clients to marry. OK? And after the lawyer advised the clients to marry, and they will take the advice, I will have to get in touch with these providers of American citizens, and tell them the criteria of the office, about the age and the height of the applicant, and these people now, our clients, will get married to an American citizen.

And after introducing them to the provider of this U.S. citizens, we will go to a place in North Hollywood where they will be married, and I will cause all the documents to be filled out and executed, and after I am done with the documentation, I will bring the documents to my boss for his signature. And before we go to the Immigration, or before the clients are brought to the Immigration, I will have to coach them on the probable areas of examination down the Immigration. We have some sort of a questionnaire or a question sheet, where we caution the applicants, our client, to master, to avoid getting caught in the Immigration during the interview.

Senator SIMPSON. What was the coaching? What did the coaching consist of?

Mr. CARINGAL. The coaching consist of principally the behavior of the petitioner, and the alien during the interview, that they should be very convincing that they are indeed husband and wife. OK. And we coached them on the areas of cohabitation, like they should know the activities of each other, how the house looks inside—you know—their daily activities, the time when they get off, and on to work, things like that.

Senator SIMPSON. Who hid the toothpaste?

Mr. CARINGAL. Something like that, Mr. Senator.

Senator SIMPSON. So that was done just to disclose that they had cohabited, they had lived together, and that that was shown?

Mr. CARINGAL. Yes, sir.

Senator SIMPSON. Trying to show habits of a married couple, that was the coaching?

Mr. CARINGAL. Yes, sir.

Senator SIMPSON. And then you would take them to this place in North Hollywood to Doc O'Connor? Is that the name that I saw in your——

Mr. CARINGAL. Yes; yes, sir.

Senator SIMPSON. What did Doc O'Connor do?

Mr. CARINGAL. Well, he had a church, you know, right in his apartment where he does the solemnizing of the marriages.

Senator SIMPSON. He was a preacher, a rector, or some, something of a church? I mean that was his church?

Mr. CARINGAL. Yeah, apparently it was his church; I do not know.

Senator SIMPSON. Do you remember the name of the church?

Mr. CARINGAL. I do not remember.

Senator SIMPSON. Well, was he an ordained minister?

Mr. CARINGAL. I do not think he was an ordained minister.

Senator SIMPSON. Well, Doc O'Connor's church. There are many denominations in America. [Laughter.]

Well, do you think, or was there information that came out in the earlier trial, or whatever, that he was found to have established that church solely for the purpose of performing these type of marriages?

Mr. CARINGAL. Yeah, I would feel so, that this church was put up to perform these type of marriages, because I met this guy in the law firm, and he was introduced to me by my boss, and I have—I was given instruction that in case we have some marriages to do, I have to bring the applicant and the sponsor, so-called, to his church, so that the papers will easily be done, you know, because it takes some time to get a copy of the record of marriage.

And if we bring it to his church, we easily get the copy of that.

Senator SIMPSON. Let me ask you, what was the rate for Mr. Aquino and Doc O'Connor? What was the full "blue plate special" rate for that? What was the cost?

Mr. CARINGAL. You mean the price that they had to pay?

Senator SIMPSON. Yes, the price of it.

Mr. CARINGAL. I am—OK. Actually, there is, there are three other people. You know, Doc O'Connor is the one who just solemnized the marriages. There are three other contacts, and I usually had—the office would charge about $2,300 if an alien decides to marry a citizen, and $1,500 of that will have to be paid to the provider of the citizen.

Senator SIMPSON. To the arranger?

Mr. CARINGAL. Yeah, to the arranger.

Senator SIMPSON. Where would the other $800 go?

Mr. CARINGAL. The remaining $800 will have to be split up between me and my boss.

Senator SIMPSON. OK. So then of the $2,300, the going rate, the fee, $1,500 to the arranger, $400 to Mr. Aquino, and $400 to you in that circumstance?

Mr. CARINGAL. That is right, sir.

Senator SIMPSON. And was there an additional retainer fee for Mr. Aquino?

Mr. CARINGAL. Yeah. To retain the services of the office, there will be—the alien will be charged $1,200 at least.

Senator SIMPSON. Do you know how much the arranger might then have given to the U.S. citizen?

Mr. CARINGAL. I am not fully aware of that but I—understand that they are not well paid, too.

Senator SIMPSON. That they were well paid?

Mr. CARINGAL. They were not well paid.

Senator SIMPSON. Not well paid. OK. But you do not really know. There was no set fee to the U.S. citizen?

Mr. CARINGAL. I am not aware of that.

Senator SIMPSON. That is very interesting, and yet, it is your opinion, and you knew it intimately, that at least you would imagine that they were paid something, would you not?

Mr. CARINGAL. Yeah, I know; I know that.

Senator SIMPSON. OK. Do you think this kind of fraud is widespread, or is this just something that is, you know, we see as not common? What do you think about this?

Mr. CARINGAL. Yeah. It is widespread; it is widespread.

Senator SIMPSON. Do you think this is true among all ethnic groups?

Mr. CARINGAL. Among all ethnic groups.

Senator SIMPSON. Do you think one of the reasons that it is widespread is because people think they can get away with it?

Mr. CARINGAL. Yeah, one reason is, you know, they are not deterred from doing it; they can get away with it; that is their impression.

Senator SIMPSON. They are not frightened by laws, if they get caught in this one, are they?

Mr. CARINGAL. No.

Senator SIMPSON. Is that perhaps the first and foremost reason why they—I mean obviously, the money—why they would do it, and then freedom, and things like that. However, is one of the reasons that they do it because they know that not much is going to happen to them?

Mr. CARINGAL. Yeah, it is easy to do.

Senator SIMPSON. Would you say that?

Mr. CARINGAL. Yeah, I would say so.

Senator SIMPSON. Do you have any suggestions for us as to how we might combat that?

Mr. CARINGAL. Well, to prevent such a problem, I would say that if they still have the so-called one-step processing in the Immigration, I would suggest that it should be applied with a lot of caution. See, the cases I got into were filed at such time when the Immigration was having the so-called one-step processing.

Now another suggestion would be to give more emphasis on the investigation as to the cohabitation of the spouses. See, these fixed marriages, usually they are not living together; they are only pretending so.

If there is more on the investigation, see, more of these cases will surface.

Senator SIMPSON. Let me ask you finally, was there any difficulty that you had when you were involved in this activity, any problem in finding U.S. citizens who were willing to participate in this?

Mr. CARINGAL. Yeah. There, there is a lot of problem insofar as our clients are concerned. You know, most of our clients are professionals, and they have got good jobs, and they would rather pay the money rather than to look for one, so——

Senator SIMPSON. Pay the money rather than look for?

Mr. CARINGAL. So they would rather, they would rather pay than go into the labor of hunting for somebody to marry.

Senator SIMPSON. But did you have any trouble finding those kind of people who were ready to do that?

Mr. CARINGAL. Well, we did not have, because we have at least three providers, you know.

Senator SIMPSON. Three steadies?

Mr. CARINGAL. Three persons who would come up with American citizens.

Senator SIMPSON. So they were just the arrangers?

Mr. CARINGAL. Yeah. All I would do is just call them up and give them the criteria that the office needs and they come up with the citizen.

Senator SIMPSON. They would come up with the citizen?

Mr. CARINGAL. Yeah.

Senator SIMPSON. But I am asking, was that difficult for them to come up with the citizen?

Mr. CARINGAL. I——

Senator SIMPSON. Was it easy to get U.S. citizens to do that? Do you know that?

Mr. CARINGAL. I would say no because they will always come up with one.

Senator SIMPSON. Yes. Well, let me go on now. Thank you very much. You have been there. Nancy Marrero. Would you please describe how you first met the man who eventually became your husband. I would appreciate having your narration on that.

Ms. MARRERO. OK. The first time I met the man, he came to me, I was a live entertainer in New Jersey, and he came into my job and said "Will you marry me?", and I thought this guy is really off——

Senator SIMPSON. You were an entertainer, you say?

Ms. MARRERO. Yes, live entertainer.

Senator SIMPSON. OK.

Ms. MARRERO. And he said "Would you marry me?," so I remember I just took a number, and said, "No, I can't, I'm really busy, I have to work," and I talked like this. And I took the number, and I have never seen him again, and I have never called the number, just threw it away.

Then I went to visit a friend of mine, and when I was there she was visiting with a gentleman, and she said, "I'll be right back; stay here; I'm going to leave and I'll be right back." I said OK. When she came back she said, "That gentleman knew you." And I said, "He does?" And she says, "Yes, he met you at work, and he asked you to marry him." And I remembered that incident because not everybody comes in and says, "Will you marry me?" And she says, "Yes, well, he's from Syria and they're looking for girls to marry them so they can stay in the country for a green card."

I never knew you had to have a green card, or visa, or immigration.

Senator SIMPSON. You had not heard about those——

Ms. MARRERO. I had never even heard about it until they said it to me then. They said, "Yes, they're willing to pay you to marry them, to stay in the country." And then after 6 months to a year, whenever, I decided that I wanted to get a divorce, they would pay for the divorce.

Senator SIMPSON. And so your first, your first experience, you were working as an entertainer, and he came and asked you to marry him, and you told him no, but later, you encountered him

and then he—then what were the terms of the arrangement? What was the arrangement that was made?

Ms. MARRERO. OK. What he did is, he offered me $2,000 to marry him. He said "We have to go down for a license, and I'll pay you the first $1,000 when we get married. And then after we get married"—the day afterward we went and applied for his green card. And when he receives his green card, then he pays me the other $1,000.

Senator SIMPSON. And what exactly did he describe to you as to the preparations for that, and the petitioning, and so on? Did he describe that to you in detail?

Ms. MARRERO. Yeah. Well, once I started getting involved with him I said to him, I was really curious about immigration, I did not know how it worked, and, "How did you get in the country if you didn't have a green card?" And how they were doing it, it was—there was 5 guys living in a 2-bedroom apartment, and they were—how they first came to the countries, they said they're coming for schooling for, and they signed and register in schooling, and that is how they get to stay first, without the green card, and then they were looking for girls like in schools, or they go different places.

And they were working for their uncle, under the table, in his stores. So they had money, financially, and they had school. All they had to do is find the girls.

And he went over the procedures, "Well, what we have to do is, I want you to stop over my house and let people see you. If Immigration's investigating, I want them to see you coming in and out and visiting," so people get familiar with my face, thinking that I am his wife.

They will just go on to the assumption that I am his wife, and he wanted me to get to know the colors of his furniture and his rugs. And then later on he eventually asked me for 10 more girls. For each girl I would receive $1,000.

Senator SIMPSON. Each girl that you helped to obtain?

Ms. MARRERO. Yes.

Senator SIMPSON. And you would be given $1,000 dollars if you could get the U.S. citizen, girls, for his friends——

Ms. MARRERO. U.S. citizen girls.

Senator SIMPSON [continuing]. For his friends, for marriage purposes, solely for the purpose of getting a green card for the 4 or 5 Syrians you described. Is that correct?

Ms. MARRERO. Yes.

Senator SIMPSON. Well, let me ask you: Was divorce a part of the package when you bought in?

Ms. MARRERO. Yes, yes.

Senator SIMPSON. OK. What was said there with regard to that?

Ms. MARRERO. OK. He said after 6 months he receives his green card. I can wait 6 months, I can get a divorce, or, 1 year. He says, "It's up to you." He says, "We can even live together and have a home, and never get divorced," and I said, no, that is not what I want. It was up to me, what I wanted to do. They lead you to think that whatever you want, and however you want to handle it, they are going to coach you because they are the ones for the green card, and they are not going to do anything to hurt you, or they are going to do whatever you want, so they can get their green

card. But at the same time, they are intelligent enough to protect themselves.

Senator SIMPSON. So in this situation, he said he would marry, he would pay you a sum for that, he would file for divorce after a certain period of time, and this was 1 year, did he say?

Ms. MARRERO. Yes.

Senator SIMPSON. After 1 year. And he would pay the cost of the divorce?

Ms. MARRERO. Right.

Senator SIMPSON. The works?

Ms. MARRERO. Yes.

Senator SIMPSON. And your agreeing to go ahead with that situation, what were some of your thoughts as to why that was good for you?

Ms. MARRERO. I was OK until I received the papers, the application for immigration, and then I started reviewing over it, and when I got to the part that said 10 years imprisonment if you get caught, I thought, oh, my God, what am I doing? and I was a little scared and sorry that I did it, and it was already too late, but it kept me from being pushy, and more hesitant, and so I finished, went through with it. And the Immigration Office was really—it was fast, simple and easy, and completely surprised me, but I was still scared and conscious of it afterward, but it was too late. I had already done it.

Senator SIMPSON. But the money was, I am certain, a great part of that, was it not?

Ms. MARRERO. Yes.

Senator SIMPSON. I mean was that one of the reasons you did it?

Ms. MARRERO. That was the only reason I did it.

Senator SIMPSON. The only reason?

Ms. MARRERO. Yes.

Senator SIMPSON. And you mentioned that there were some special preparations before you went to the Immigration Service. He knew what he wanted you to do, did he not?

Ms. MARRERO. Yes.

Senator SIMPSON. And those things were visiting the apartment, seeing the landlady, doing things, is that not what you are saying?

Ms. MARRERO. Right. But I think everything that he knew that he was doing, he was going through his uncle that he was working for, which was already a citizen in the country and owned his own business. And at the time that he was marrying me, I did not know everything he was doing, but he went into business himself and bought a business himself, which I never knew about until the end of everything, that came out in the end.

Senator SIMPSON. And so he was——

Ms. MARRERO. His uncle more or less prepared him for everything, and they had—I guess each time somebody went over to Immigration, they would grab so many applications, and they more or less practiced and went over it, and rehearsed themselves, and from somebody else going from before, they let them know what it is like, afterward.

Senator SIMPSON. And did you ever find other American citizens for him?

Ms. MARRERO. No; 10 girls. I only knew of myself and I was not proud of it, so I was not going to run out looking for other women and tell them what is going on. I did find one friend that I offered to, that was very close, and she went only halfway with the procedures.

Senator SIMPSON. Do you think these types of immigration marriages are a common occurrence?

Ms. MARRERO. Excuse me?

Senator SIMPSON. Do you think there are a lot of them? Do you think there are a lot of these kinds of arrangements?

Ms. MARRERO. Yes, in many different ways.

Senator SIMPSON. Do you?

Ms. MARRERO. Yes.

Senator SIMPSON. Just from what, talking with your friends, or knowing people that are doing it? What? Why do you feel that it is a common thing?

Ms. MARRERO. Why do I feel it is a common thing?

Senator SIMPSON. Yes.

Ms. MARRERO. It is something that is happening everywhere. It is easier for businessmen because they can pay them under the table. It is not even minimum wage. They help them out, they make so much money, and a lot of these people that are coming from foreign countries do have a very lot of money, so they are willing to do anything they possibly can to get into the country and start their own thing. And it is very easy to get past Immigration. The only reason that they got caught is because they, each guy continued to go to the same doctor for blood tests for marriages. Other than that, they would never have gotten caught.

Senator SIMPSON. They went to the same doctor for——

Ms. MARRERO. Same doctor; every guy went to the same doctor; did not even know how to talk English.

Senator SIMPSON. Well, you learned a lot about immigration laws, did you not, in that period?

Ms. MARRERO. Afterward, yes.

Senator SIMPSON. Afterward. Let me ask you a final question. Do you have any suggestions, just as a citizen of the United States, and it does not have to be any legal jargonese. What do you think we ought to do, to try to stop that?

Ms. MARRERO. I do not know anything about the rules and regulations, but I think that the people that work in the Immigration offices may have ideas, already, to suggest to you, that they can put down something stricter.

Senator SIMPSON. At any time did you think that they were afraid, that if they did get caught, that something bad would happen to them, or, did they just kind of scoff that off?

Ms. MARRERO. No. They got caught and went to jail and had to pay fines, and the one uncle that was bringing them in, he still owns his business, still owns his home. He paid a penalty, and life still goes on, so it is going to happen again. And I ran into one of them, after it was all over, after he came out of jail, and he was heading to Texas.

Senator SIMPSON. Do you think that if we made those penalties tougher, that that might send a signal to those people?

Ms. MARRERO. It is possible, but on the application it already says there is imprisonment and everything else. If that is something that is not going to scare them, then that is not the way to go about it. I am sure there is something else that you can do.

Senator SIMPSON. Are these persons you describe, are they still in the United States?

Ms. MARRERO. I do not know if they got deported yet, or some of them been—I received even a Christmas card from one, and this is after he is arrested, and caught, and everything, and he was in Texas then, and he wrote his address in Syria, but it was postdated, postmarked Texas.

Senator SIMPSON. Well, let me thank you very much and let me note for the record, that Miss Marrero fully assisted the Immigration and Naturalization Service in the investigation of this marriage arrangement, and served as a key witness in the INS's successful prosecution, and I thank you. And you, too, Mr. Caringal. You have all been very helpful and shared a great deal of yourselves, and as I say, that is tough to do. You have, through your own sharing and willingness to expose your vulnerability in the situation, have helped us to decide what we might be able to do, and I think we have a task in front of us and the job is to do it in a way where we do not impinge upon the privacy of citizens, but we do have a task. And I think it is very real, or I would not have had this hearing.

I do not do hearings to see how many people will show up or how many lights will bounce off my bald dome. I do them to see if we can find out what is going on, and this, I kept coming across this stuff, and getting the letters, and coming to the subcommittee, and Dick would come in and John Ratigan, and say, you know, here is something really cooking, and people are not paying a bit of attention.

I think it is very real and I think it is very prevalent, and I think we ought to be about our business, and you are helping us do that, and I thank you so much, really. I appreciate it.

Now our final panel, Dr. David North, director of the—sorry. Doctor. I keep doing that to you. You have always impressed me anyway, so, Dr., Mr., the Honorable. Anyway, Dave North, director of the Center for Labor and Migration Studies of the New TransCentury Foundation.

David North, director of the Center for Labor and Migration Studies of the New TransCentury Foundation. Mr. Roger Conner, executive director of the Federation for American Immigration Reform, and Mr. Jules E. Coven, president of the American Immigration Lawyers Association. And if you would proceed in that order as on the agenda, please. David.

STATEMENT OF A PANEL CONSISTING OF DAVID S. NORTH, DIRECTOR, CENTER FOR LABOR AND MIGRATION STUDIES, NEW TRANSCENTURY FOUNDATION; ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM, ACCOMPANIED BY DANIEL STEIN, STAFF COUNSEL; AND JULES E. COVEN, PRESIDENT, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. NORTH. Mr. Chairman, thank you for inviting me here. I would like to say that, first of all, though she is not in the room, that I have a valid marriage to a perfectly wonderful U.S. citizen, and there are some happy marriages, unlike the four that we heard about just a few minutes ago.

Senator SIMPSON. We will have a special hearing on that.

Mr. NORTH. Let me not talk about case histories, because as I indicated, I cannot talk to you on that. These were dramatic witnesses and I am a more traditional one. Let me talk about numbers and computers, and television cameras.

First of all, in terms of numbers, let me trot out a couple for you, and I have two concepts here. One is all-American marriages, that is, all marriages recorded in the United States of America, and the other is visa-creating marriages. Visa-creating marriages were the kind that we just heard talked about. It is a marriage between an alien on the one hand, and a citizen, or a permanent resident alien on the other, that leads to the granting of an immigrant visa.

OK. Those are the two kinds of marriages. Let me quote four numbers. In 1962, there were 1.6 million marriages of all kinds. By 1984, there were 2.5 million marriages of all kinds. This is an increase of about 60 percent.

In the same time period, there was an increase in the visa-creating marriages from 23,962 in 1962 to 149,296 in 1984.

So, while Americans generally were getting married at a rate about 60 percent higher in 1984 than in 1962, the visa-creating marriages increased not by 60 percent or 160 percent, but by 600 percent. There were six times as many.

I submit to you that some, to perhaps many of those marriages, were fraudulent. Second, there are 2 different kinds of marriage fraud. Your two first witnesses, here just before me, belong to what I call the one-innocent cases. The other two dealt with the second kind of marriage fraud which is the no-innocent cases.

In the no-innocent cases, the alien pays money to the citizen to go through a marriage that both realize is fraudulent. In the second, the alien woos a citizen, or a green card holder for the purpose of securing an immigrant visa. The no-innocents cases are easier for INS to do something about. It is not easy to do anything about any of them, but they are easier to cope with than the one-innocent case. Because the woman who was sitting here just a few minutes ago was an innocent, and she could not tell INS, at the moment she was filing for an immigrant visa, or the consular officer in that case, that there was anything wrong, because she did not think that there was anything wrong.

So, those are two different kinds of cases, and they require a couple of different approaches. What I would do about it is this: I

think the United States should borrow something that the British have been doing for a number of years.

An alien marrying a British subject is granted a nonimmigrant visa good for 1 year. The alien is allowed to work in the United Kingdom, to enter and leave that country, and if the marriage is still valid 1 year later, the alien can apply for permanent status.

I think the 2 years that INS is suggesting is probably better than the 1 year that the Brits are using. But Great Britain is a nation that believes in civil liberties. We get much of our legal tradition from Great Britain, and if they are doing that, I think it is something that we might copy. I also gather that it would be useful to have a better set of prosecutorial tools to deal with violators.

I will leave those legal concepts to lawyers. I am not one. But I would like to suggest something else that should be done on a systemic basis.

Too often laws are written by lawyers. Too often laws are administered by lawyers. Too often everybody is thinking in terms of cases, precedents.

I would like to suggest that in addition to those useful approaches, we think more about systems. For instance, I would like to see INS able to make full use within sensible bounds, of Internal Revenue, Social Security, and other computer systems, to check on the validity of visa-causing marriages.

Congress authorized such data matches in section 290 of the INA, but subsequently, an internal ruling made within the Internal Revenue Service changed things.

It was made in reaction to the Tax Reform Act of 1976. Currently, if a citizen complains, as we heard the two women sitting here, that an alien has misled her, INS is helpless. It has issued the green card, or sometimes only the work authorization stamp on the I-94. It does not know where the alien is, and the alien no longer has to register, as the alien used to, until the Efficiency Act of a few years ago.

If INS asks either the Social Security Administration, or, IRS, to help locate that person, IRS or Social Security will say, "Gee, we'd like to but we can't because of our interpretation of the Tax Reform Act of 1976."

Congress needs to intervene on the side of INS in this interagency squabble. Beyond using IRS and SSA computers in this way, I think INS should conduct some carefully modeled experiments with State and local computers carrying information about marriages and divorces, as the applying citizen may have frequently married and divorced aliens in the past.

There are presumably systems in some places where you could find that out. Is the applying citizen, frequently married? Is anyone involved, guilty of bigamy? That would be nice to know.

Can we detect patterns among post-adjudication divorces? One of the witnesses suggested that a careful review of the medical evidence would be helpful, and was helpful in the case that she talked about.

Further, all INS offices should do what one of them does; the one in New York. When it encounters in marriage applications—and these relate to new marriages—female residents with children, it checks the names of the newly wed woman with the AFDC roles.

That is Aid for Families of Dependent Children. In some of the no-innocent fraud cases, women receiving welfare benefits file a petition on behalf of the alien. Now, the alien should not be allowed to do what he is doing to the system, and similarly, she should not be able to claim to the welfare system that there is no spouse, while claiming to the Immigration Service that she has just acquired a spouse.

Now that is a pretty open and shut case, and INS should be encouraged to followup on those leads where it can.

I have talked a little bit about numbers, and I have talked a little bit about computers. I also want to talk about television.

I was reminded this past Monday night while watching "Taxi," which is a TV show on a rerun basis, one of the cab drivers, Jim, the aging hippie, was being teased by the others for forgetting that he had played preacher—Doc Conner—that he had played preacher at a mock wedding designed to save someone from deportation.

Here marriage fraud was presented as both a routine part of American life and as a joke. What I suggest in that connection is that the Government should mount a serious, well-designed campaign, not just in the United States but also in some of the countries where this kind of fraud originates. The Government should try to get pictures of U.S. citizens on film going to jail for their part in conspiratorial marriage frauds, and showing aliens being deported for the same reason.

And a few TV clips, as you know, are worth thousands and thousands of words.

So I think we should change the law, somewhat along the lines that INS suggests, but we should do more. We should set in motion some systems to prevent and deter marriage fraud, and then let the world know that we are doing that. Thank you, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF DAVID S. NORTH

Mr. Chairman. There are three populations eligible for US immigration visas:

- o the first and the largest are relatives of US citizens and Permanent Resident Aliens (PRAs).
- o highly skilled employees of U.S. firms.
- o refugees.

Many people want to migrate to the United States, and many of those who do do not fall into these three categories. Unlike the laws in other immigrant-receiving nations, there is no room for the so-called "independent" immigrant. We do not welcome the restless talent of the world; we chase away the would-be immigrant investors; ours is a system heavily tilted towards nepotism, a word rarely heard in this room. Knowing that this is the case many aliens take advantage of our system and seek their visa by arranging a fraudulent marriage.

The very highest priority in the immigration process goes, and this is understandable, to aliens who marry US citizens. There is no waiting once the application has been approved; these new spouses are admitted outside the numerical limits. Spouses of PRAs can secure immigrant visas as well, but there is a wait of about one year for most such applications, and considerably longer waits for those married to people from Hong Kong, Mexico and the Philippines.

It is against this setting that it is useful to review the trend in all U.S. marriages and visa-creating marriages over the last few years. The latter have grown at ten times the rate of the former; all marriages have increased by 60% between 1962 and 1984, while visa-creating marriages have increased by 600%. Some to many of the latter are presumably fraudulent. The numbers follow:

Year	All Marriages	Visa-Creating Marriages
1962	1,577,000	23,962
1970	2,159,000	51,895
1982	2,495,000	99,268
1984	2,487,000	149,296

Source of Data: All U.S. marriages, for years through 1982, Statistical Abstract of the United States, 1984, Table 82; for subsequent years, unpublished data from the National Center for Health Statistics; visa-creating marriages for years through 1982 were extracted from The Statistical Yearbook of the Immigration and Naturalization Service, 1982, Table IMM 1.5 and predecessor tables; for 1984, unpublished data from the Immigration and Naturalization Service.

There are two different kinds of marriage fraud, different from each other but equally unattractive. There are the no-innocents cases and the one-innocent cases. The first happens when the alien pays money to the citizen to go through a marriage that both realize is fraudulent. In the second, the alien woos a citizen or green card holder for the purpose of securing an immigrant visa. The innocent US citizen or PRA thinks that it is a real marriage, only to discover some months later that the loved one had defrauded both the spouse and the US Government.

INS' attempts to prevent and detect marriage fraud are designed for the no-innocents cases only, as the other kind is extremely difficult to detect (and has not yet been detected by the resident spouse. What INS does in this area is awkward, labor-intensive and not terribly rewarding. It is called the parallel interview, in which two INS investigators, simultaneously and in separate rooms, ask the bride and groom a parallel series of questions regarding their lives together (e.g. what is the color of the bedroom curtains? What is the size of the bed?) Since this tactic is well-known, the couples so tested often are prepared for it.

What should the US do about the apparently growing number of fraudulent marriages?

First, the United States should borrow something from the British. An alien marrying a British Subject is granted, upon application, a non-immigrant visa good for one year; the alien is allowed to work in the UK, to enter and leave the country, and , one year later to apply for permanent status if the marriage is still valid. If granted, the one year of nonimmigrant status can be counted towards naturalization. Neither the British subject nor the new spouse. loses anything in this process but it must discourage abuse of the system and it certainly prevents any Briton from marrying an alien for money more than once a year.

I understand that our Immigration Service is supportive of a similar system, the creation of a two-year conditional (interim) resident status for new spouses of citizens or green-card holders; aliens in marriages that last through the following two years then would be able to seek permanent resident alien status, with their first two years counting towards naturalization. At the time of application for permanent status the burden of proof would be on the alien; the applicant would have to show that the marriage was a viable one. If INS is concerned about the validity of a marriage, two years after it grants permanent resident alien status, it now has to prove the case. The introduction of the two-year interim period would be a good idea simply because it would tend to discourage marriage abuse; one would think twice about trying to maintain a sham marriage for such a length of time. Passage of such a statute would be a good idea, but only the first step.

Second. The Government needs some additional tools to prosecute those who engage in fraudulent marriages. I defer to the Immigration Service on the legal steps needed. What I want to talk about are computers.

I would like to see INS able to make full use (within sensible bounds) of IRS, Social Security and other computer systems to check on the validity of visa-causing marriages. Congress authorized such data matches in Section 290 of the INA but subsequently an internal ruling, within IRS, made in reaction to the Tax Reform Act of 1976, over-ruled section 290. Currently if a US citizen complains that an alien misled her (or him) into a marriage INS is helpless. It has issued the Green card (or sometimes only a work-authorization I-94) but does not know where the alien is. If INS asks either Social Security or IRS to help locate the offending alien, the reply will be that they

would like to help, but can not. Congress needs to intervene, on the side of INS, in the inter-agency squabble.

Beyond using IRS and SSA computers in this way, I think that INS should conduct some carefully modelled experiments with state and local computers carrying information about marriages and divorces. Has the applying citizen frequently married and divorced aliens in the past? Is anyone involved guilty of bigamy? Can we detect patterns among post-adjudication divorces? INS should get a better handle on what has been happening to such cases, and what it can do about them in the future.

Further, all INS offices should do what the one in New York does; when it encounters, in marriage applications, female residents with children it checks the names of the newly-wed woman with the AFDC rolls. In some of the no-innocent fraud cases the woman is receiving welfare benefits. She should not be able to claim to the welfare system that there is no spouse while claiming to the INS that she just acquired a spouse

Once the first two steps have been taken it is time for the third one -- a serious, well-designed, international public relations program to let those who may be thinking about defrauding the system know that it will be more difficult in the future. A television show on this past Monday night stimulated this suggestion. "Taxi" was on the air (a rerun) and one of the cabdrivers -- Jim, the aging hippie -- was being teased by the others for forgetting the time that he played a preacher at a mock wedding designed to save someone from deportation. Here marriage fraud was presented as both a routine part of life and as a joke. The Government should try to get a different message across, showing U.S. citizens, on film, going to jail for their part in the conspiratorial form of marriage fraud, and showing aliens being deported for the same reason.

Let us change the law, but more; let us set in motion some systems to prevent and deter marriage fraud, and the let's tell the world that we are doing so.

Senator SIMPSON. Thank you very much, and now, Mr. Conner, please.

Mr. CONNER. Thank you, Mr. Chairman. Mr. Chairman and members of the subcommittee, my name is Roger Conner and I am the executive director of FAIR, the Federation for American Immigration Reform.

We appreciate very much the opportunity to testify before the subcommittee on FAIR's views, on ways we can improve our immigration policies to improve the detection of fraudulent marriages that have been entered into solely to avoid the immigration laws, and we hope that new legislative proposals will come out of these hearings, Mr. Chairman, the problem of marriage and immediate relative fraud to gain immigration benefits has really grown to epidemic proportions.

Although you have heard these dramatic individual witnesses, FAIR conducts one of the largest programs of research and information-gathering on immigration in the United States.

In our own newsletter, in the last 2 years—I just went back and glanced at some of the few items, samples that we had included in our written statement and we have discovered, as you have, Mr. Chairman, that this issue keeps bubbling up over and over. These reports and the witnesses you saw represent but the tip of the iceberg on a never-ending fraud on the Immigration Service. Why has this become so commonplace? The reason, we think, is simple.

There are massive backlogs, huge waiting lists, literally millions of people want to come, to be permanent residents to the United States, and marriages to American citizens are now the simplest, easiest way to skirt the immigration laws.

Moreover, there is a lack of an overall ceiling on immigration, so when the number of permanent residents grows every year, nobody complains because no shoe gets pinched.

And there is also weak enforcement and the ready availability of fraudulent documents. Put it together and perhaps the most telling commentary of the scope of the problem comes in an anonymous letter from an immigration lawyer to "Interpreter Releases," the newsletter of the Immigration Bar.

He wrote about all the people that come into his office, and he does not counsel them to evade the law, does not encourage fraud, and yet he and his office know that 90 to 95 percent of these cases involve sham marriages.

He writes:

> It is our experience that the INS will never detect a sham marriage unless one of the parties to the conspiracy actually tells them outright that the marriage was contracted for immigration purposes, or unless the client handles his arrangements in a completely idiotic fashion. The record is fairly clear. In 3 years, 250 sham marriages have gone through this office—referring to his own immigration office. INS has detected nothing despite the fact that these clients have not taken extraordinary precautions to avoid detection.

It is common knowledge in immigrant communities that the INS cannot and will not apprehend them, or identify them, if they engage in fraudulent marriage, and it is viewed in many immigrant communities as legitimate, even an honorable exercise, to secure the admission of their friends.

So, we assert the problem as large and growing. In our testimony we have made a large number of very concrete and specific suggestions.

All of them revolve around two basic changes in policy. The first of these is, it is essential that in some way you require the person who gets an immigration benefit by marriage to secure only a temporary residence in the United States, and require them to come back to the Immigration Service after a period of time has passed, to document that their marriage is in fact valid.

This is not going to be a burden on the valid applicant; it will be a real burden on those who are trying to get around the system, because to hold something like what the last witness described to you, together for 6 months or 1 year is one thing; but 2 years is another. The notion that has been suggested of postaudit reviews we think is a bad idea because the Immigration Service is so overburdened, it tends to deal only with that which it has to.

So, require the aliens to come back and to have a review before they get their permanent resident status would make it considerably more difficult for the fraud to take place.

In addition, let me just highlight some of the other recommendations that I think are key. If a divorce occurs within 2 years of marriage, we believe that the alien should be required to notify the Immigration Service, and if they fail to notify the Immigration Service, that should be grounds for either rescission of the benefit they have been granted, or for denial of adjustment status later on.

The key here is that the burden of proving a valid marriage needs to be shifted off of the Government and on to the person who is securing an immigration benefit.

Remember, the right to live permanently and work in the United States is an incredibly valuable commodity and one that we ought to protect.

We also simply do not understand why there is no statutory bar to a section 245 adjustment for a "K" visa holder, say, who comes in, then does not get married. And they come in as a fiance, but they do not get married, and yet they can still yet adjust their status to permanent resident alien. That, we think, ought to be eliminated.

So, first, shift the burden on to the alien. The second thing is, the penalties for this sort of thing have got to be made more realistic and serious.

For one thing, we should amend section 241(f)(1)(A) (i) and (ii) to require that the Attorney General may not waive as a ground of exclusion, the fact that the person previously engaged in immigration fraud.

That is, if you engage in a fraudulent attempt to secure an immigration benefit by marriage fraud, you ought to be permanently barred from the United States. Or barred from the United States for a very long time.

Because that is at least a modest deterrent that we ought to have put in place, to let them know that we are serious about stopping immigration fraud.

We also believe that section 245 which allows for adjustment of status, should be amended, to make it clear that nonviability of the

marriage at the time they filed the application is prima facie grounds for denial of the application.

What happens now is, they come in and apply for adjustment of status, and later it is learned that the marriage was not viable at the time they made the original application. That in and of itself is not a ground for rescission of permanent residents status.

One of the reasons that the women who testified here expressed frustration that the INS will not help them, when they tell INS what has happened, is because the law has become so skewed in favor of the person who secured the immigration benefit by fraud. That is why we suggest, for example, that if a spouse comes in and alleges that there was fraud, and there has not been a trial, that should create a rebuttable presumption of fraud. We should shift the burden of proof to the individuals who married these women to come in and prove good faith intent to the Immigration Service.

What happens now is, the burden remains on the Immigration Service to prove that the marriage was entered into fraudulently, and of course it is, in these matters, virtually impossible for the INS to prove it. We must shift the burden back to where it belongs, on the alien beneficiary.

We concur with and would support any proposal that would amend section 245(c), to add a provision barring adjustment of status by any alien, where the petitioner's application is based on a marriage entered into at any time after the "Order To Show Cause" has issued.

What happens here is an "Order To Show Cause" is issued, and the first deportation proceedings have been started. So what happens? The person goes out and starts looking for the wife, or for the husband, as the case may be.

And if you simply removed any opportunity for the person to apply for an adjustment of status and stop the deportation proceedings by finding a citizen spouse that vehicle would be closed off.

The last thing we recommend is that the act should be amended to bar any alien who has acquired immigration benefits through marriage to a U.S. citizen from filing a second preference petition within 5 years, because again, here is what happens.

The alien gets an American citizen spouse. As soon as the alien gets his green card, they file for divorce. And then we have the Immigration Service faced, 6 months later, or a month later, with an application for the admission of the real spouse as a spouse of a permanent resident alien, or under the second preference.

Part of the frustration of the INS staff is they see this fraud all the time. They are just as aware of it as you or I, and they see this guy who comes in, or this woman who comes in, got the marriage, got a divorce, and the next day or the next week is applying for the spouse, and there is nothing they can do about it. So we believe there should be at least a 5-year wait after they secure the permanent resident status by marriage to an American citizen, before they can come and apply for a later spouse.

The final statement I would make is this: We believe that by adopting the long list of recommendations that we have made here, that it will go a long way toward restoring the integrity of the marriage preferences.

The grant of immigration benefits based on marriage is an act of generosity and kindness given to immigrants by the American people, and it should not be allowed to degenerate into a vehicle for massive fraud; because if we do not adopt proposals of this kind, our humanitarian instincts and national ethics may be threatened as the American people begin to feel that those making these assertions about marriage are trying to manipulate and take advantage of citizens.

Mr. Chairman, I would like to say that our staff counsel of FAIR is with me today, Dan Stein, and he has been doing significant research on this subject for over 2 years now. The detailed recommendations that we have here are largely the result of his research work. I wanted to mention that.

Senator SIMPSON. Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF ROGER L. CONNER

Mr. Chairman, members of the subcommittee, my name is Roger Conner, and I am executive director of FAIR, the Federation for American Immigration Reform.

Thank you very much for the opportunity to testify before the subcommittee to offer FAIR's views on the ways we can improve the detection of fraudulent marriages that have been entered into solely to avoid the ceiling on legal immigration. We hope that this forum will provide a basis for legislative proposals to curtail this growing phenomenon in a meaningful way.

We are confident that with the strong leadership of this subcommittee, every opportunity for a sound legislative initiative will present itself.

Marriage Fraud -- An Epidemic

Mr. Chairman, the problem of marriage and immediate relative fraud to gain immigration benefits has grown to epidemic proportions. We have all seen or read tragic stories of the innocent American caught in a whirlwind of passionate romance with a foreign lover, leading to the quick marriage, only to find that the aggressive suitor has suddenly lost interest as soon as permanent resident status was obtained.

It is a truly sad tale, one with a human face, reminding us of the scope of human suffering occasioned by a chaotic and unenforced immigration policy. And it is a tale that is repeated all across the country, with appauling frequency.

Even more common is the collusively fraudulent marriage, where the citizen spouse is paid several thousand dollars to enter into a marriage that will be annulled several months later, no questions asked.

What follows are typical marriage fraud schemes of the year 1985 all as previously reported in the FAIR Immigration Report:

* In October 1984, agents from the INS and the San Antonio, Texas, Sheriff's Department raided 14 massage parlors in the San Antonio area and confiscated the green cards of about 50 women charged with prostitution, pandering and massage parlor violations. According to the Sheriff's Captain Rolondo Taroffa, "About 90 percent of the masseuses are women who came in marrying GI's." Many of those arrested entered the U.S. as brides of American servicemen stationed overseas. American servicemen in Korea and the Philippines are often approached by women seeking marriage for immigration purposes. The GI's are typically paid between $1,000.00 and $5,000.00 for their marriage and they are granted a quick divorce upon their return to the United States. Though the woman is no longer married to an American serviceman, she retains her immigration benefits and can even petition for the admission of her relatives.

* In Philadelphia, six Syrian men were charged with paying women to marry them in order to gain permanent resident status. The arranger was a convenience store owner who helped friends on nonimmigrant visas obtain permanent residence.

* In August 1984, the Portland office of the INS charged that 95 percent of marriages between (U.S.) citizens and (alien) members of the

disciples of guru Bhagwan Shree Rajneesh are phony; they are designed to insure his followers can stay in the country.

* Also in August 1984, the Los Angeles Times reported that marriage fraud has taken a new twist: illegal aliens are using stolen identification documents and stand-in grooms and brides to "marry" U.S. citizens. Usually, the citizen is unaware that he has been "married" at all. Peggy Martinez of Pacoima, California, was shocked to find her stolen documents had been used to marry her, her sister and her brother to illegal aliens seeking permanent resident status in the United States. [In fact, several years ago, immigration inspectors in Chicago discovered 17 illegal aliens all married to a single unsuspecting American!]

* In July 1984, an indictment was returned against Los Angeles Attorney Paulino Amadno Aquino (a cousin of slain Filipino opposition leader Benigno Aquino, Jr.) for arranging sham marriages.

And next month's FAIR Immigration Report records this typical story from 1985:

* Clerks who issue marriage licenses in Miami have noticed the same brides and grooms popping up to marry recently arrived foreigners. After examining the records of 50,000 weddings in Dade County, Florida, the Miami Herald found more than 50 citizens involved in 175 suspected fraudulent marriages since January 1983 (See, June 13, 1985). Though most citizen spouses were women, one man married four different women in less than a month. Roughly half of the questionable marriages were to Haitians; the rest involved men and women from around the globe, including Spain, Jamaica, India, Argentina, Norway, Guatemala, China, El Salvador, and Bolivia. When a Miami Herald reporter, claiming to be an illegal alien, visited Luzcar Immigration Counseling at 752 W. Flagler St., Miami, director Carmen P. Hernandez said that for $4,000.00 she would provide a two-week "course to answer intimate questions that the INS might pose to the reporter and his "wife" in order to determine if the marriage was valid. Said Hernandez, "you'll have to study hard for two weeks. You have to do what I say. I have 100 percent success because people do what I say."

  The Herald also reports that black-market birth certificates obtained in Puerto Rico are part of many marriage fraud schemes.

  And on June 13, 1985, a federal grand jury indicted 29 people, and the INS apprehended 14 people, including a pastor, on charges of operating a marriage fraud ring in Belle Glade, Florida. The marriages involved cash payments as high as $10,000.00 a marriage. Many of the marriages were performed at night in a funeral parlor, often to single mothers seeking quick money.

Mr. Chairman, these reports represent but the tip of the iceberg in a never-ending fraud on the American people. The list goes on and on.

Why have fraudulent marriages become so commonplace? The reason is simple: In an era of backlogs and huge waiting lists, marriages to U.S. citizens have become the simplest, most foolproof way of skirting the per country and annual ceilings on legal immigration.

Moreover, it has been fostered by the lack of an overall ceiling on the number of citizen spouses, a weak investigative enforcement posture, and the ready availability of fradulent documents. Today, marrying a U.S. citizen nearly guarantees approval of an application for permanent residence.

Perhaps the most telling statement of the state of the citizen-spouse super-preference comes from an anonymous immigration attorney in New York. A few years back, he related the following all-too-familiar professional experience to the editor of the immigration law digest, Interpreter Releases (Vol. 59, No. 9, February 24, 1982, at 144, 145):

> Your recent talk to the New York Lawyer's Association was, as one might expect, a nice job of exposition. Unfortunately, your views on the sham marriage situation will make experienced immigration lawyers shake their heads at your naivete.
>
> On page 693, you state, 'The INS is zealous in its efforts to expose sham marriages and is highly successful in doing so.' I, for one, wish that this were so; but accumulated experience tells me that it isn't.
>
> The firm at which I now work as an associate handles on the average about 100 spousal I-130's per year. Like any sensible practitioners, we do not induce clients to commit fraud; nor do we receive confessions from clients on the subject. Thus, in any given case, we never 'know' that a sham marriage is involved. Yet we are all quite certain that between 90 and 95 percent of these cases involve sham marriages. The circumstances make it completely obvious.
>
> It is our experience that INS will never detect a sham marriage unless one of the parties to the conspiracy actually tells them outright that the marriage was contracted for immigration purposes (as, for revenge) or unless the client handles his arrangements in a completely idiotic fashion (e.g., he fails to learn the name of his 'wife,' he gets an accomplice who is twice his age and can't speak his language, etc.). The record is fairly clear: in about 3 years, roughly 250 sham marriages have gone through this office. INS has detected nothing despite the fact that these clients have not taken extraordinary precautions to avoid detection and despite the fact that many secure dissolutions almost immediately after the Green Card issues.
>
> So beneficial is the status of 'spouse of a U.S. citizen,' so simple is the procedure, so high the success rate, that it becomes more and more difficult to dissuade clients from taking this route to a Green Card.

It is common knowledge in immigrant communities that the INS is woefully understaffed to investigate properly the number of immediate relative petitions filed on behalf of prospective immigrants annually. Many within immigrant communities consider fraudulent marriages a legitimate -- even honorable -- exercise to secure the admission of friends, relatives and fellow nationals.

The results of internal studies by the INS indicate that 30 to 40 percent of all applications submitted in support of relative status (the so-called I-130) are fraudulent, supported either by bogus documents, altered documents, imposters, or no documents at all. In particular, the INS has concluded, and we

have no reason to disagree, that based on their own procedures and available resources, inadequate information is collected on the petitioner to determine if 1) prior marriages have been annulled, 2) the petitioner in front of the examiner is the same petitioner who appeared when the petition was filed, 3) the petitioner is who he/she says he/she is or that person has filed previously on behalf of any other aliens, 4) the petitioner was accorded permanent residence as a result of a recent fraudulent marriage in which this petitioner was the beneficiary in the earlier proceeding and the original petitioner in the previous proceeding (a putative lawful spouse) is now filing as the beneficiary today, 5) the beneficiary is actually related to the petitioner in the manner alleged, 6) or the petitioner has a separate address.

Many of the marriage petitions are adjudicated in streamlined adjudications procedures, in which neither the petitioner nor the beneficiary is adequately identified. In many cases, the files are not routinely consulted to verify allegations as to identity, claims to status, and kinship. Moreover, the average interview with the petitioner and beneficiary lasts perhaps ten or fifteen minutes, hardly enough time to thoroughly evaluate the legitimacy of a marriage.

INS currently estimates that the number of fraudulent I-130's filed in any given year is between 150,000 and 200,000 and that the number is growing. Without adequate information or documentation on the petitioner and beneficiary, the potential for fraud is obvious. For those engaging in fraudulent marriages, it is generally a risk-free operation. The entire system is in dire need of overhaul.

The dramatic escalation in fraud is also suggested by the overall number of visa-causing marriages, which have doubled between 1970 and 1983 to dramatically outpace the overall increase in American marriages generally over the same period.

There is no reason to believe the situation will improve in coming years.

Possible Solutions

Mr. Chairman, you have asked us to address some of the approaches you are considering for possible new legislation. I will discuss them in turn.

1. Should the "initial approval of a spousal petition [be] conditional, subject to a further, final review by the Attorney General, perhaps two years after the initial filing?" In the alternative, should the Attorney General be authorized to review spousal petitions on a "post audit" basis?

Currently, the allocation of investigator manhours to detect applications based on fraudulent relationships has been subordinated to the more important priorities of criminal alien investigations, the employers of illegal aliens, the detection of smuggling or counterfeiting rings, or the detection of aliens not eligible for welfare (the so-called "Impact Level I" priorities). The investigation of the facts supporting an I-130 petition is a time-consuming process, and, in terms of available resources, can be one of the least rewarding ways in which an investigator can spend his time. (In some high risk areas, investigations of the overseas facts underlying I-130 applications can take more than a year, mostly because of backlogs.)

Worse still, under the current statutory scheme, an investigator must appraise a marriage perhaps within days or weeks after the marriage was concluded. Too often, investigators

must evaluate a marriage before there is any lifestyle to appraise. Moverover, several recent court decisions have constrained the investigator from asking certain kinds of "intimate" questions that could help reveal more about the marital relationship.

Therefore, we believe that it is highly desireable that where entry and status are based on marriage, section 241(c) should be amended to provide that when a divorce occurs within two years of the marriage, the alien must come forward to demonstrate that the marriage was not entered into solely for the purpose of evading immigration law ceilings. Failure to report a judicially-terminated marriage within two years should be grounds for rescission in and of itself absent reasonable excuse, inadequate notice, or substantial equities compelling a waiver. This would deter the recently-adjusted beneficiary from getting a quick divorce, and immediately filing a second preference petition on behalf of a new nonimmigrant or overseas spouse.

In the alternative, we agree that consideration should be given to a proposal to create a two-year provisional status for an alien who obtains benefits by marriage. At the end of two years, all beneficiaries would be required to come forward to prove the bona fides of a marriage with objective documentation (i.e., income tax statements, insurance beneficiary forms, leases, bank accounts, etc.), as well as testimony or other evidence regarding courtship, wedding ceremony, and overall cohabitational experience.

The key is to insure that, given an overall shortage of investigators, the alien is presented to the INS either as soon as the divorce occurs, or at the end of two years, whichever is later, to insure that the INS has a true "lifestyle" to examine.

Respectfully, Mr. Chairman, we are somewhat skeptical of the "post audit" approach, in view of the fact that section 241(c) already provides the Attorney General with authority to post-audit petitions if he believes the marriage "was made for the purpose of procuring his or her entry as an immigrant." Any provision that requires a proactive INS is unlikely to meet greater success. We believe the burden of proving a valid marriage should be shifted back from the government to its proper place: on the alien beneficiary.

2. For either approach, what should be the standard of review? How major a factor should cohabitation be, and should birth of children be a factor?

At the initial adjudications level, those factors mentioned above as objective indices of a bona fide marriage should weigh heavily in the decision. Clearly, cohabitation will be shown as a matter incident to an on-going, viable relationship. Moreover, if there are offspring from the marriage, and the petitioner or beneficiary, as the case may be, can prove paternity, it would seem almost by definition to have been a legitimate marriage for immigration law purposes.

On the administrative appellate review level, the findings of the adjudicating officer should be reviewed to see if they are supported by substantial evidence. This is in keeping with the tradition of providing the alien with substantial procedural process at the administrative level, while limiting judicial review to respect the broad discretion granted by Congress to the Executive Branch in these types of decisions.

Judicial review should be available in accordance with section 106(c) in concert with review of the Final Order of Deportation. The same standards of judicial review as to the Attorney General's findings of fact should also apply in this context: was the finding arbitrary, capricious or an abuse of discretion?

3. Should the statute's definition of a fiance(e) be changed to include such matters as prior meeting, common language, or a firm intent to marry?

Mr. Chairman, the fiance or "K" nonimmigrant is the principal domain of the so-called "mail-order" marriage. So much so, in fact, that question 18 on the fiance petition (form I-129F) is as follows:

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18. I [] have []have not personnally met and seen the beneficiary.

(Place an "X" in the appropriate box. Also, if the first box has been checked, state the place and date of such meeting.)

Failure to have met the beneficiary is certainly an indication of fraud. But just because the petitioner has not met the beneficiary, that is not an express statutory basis for denial.

The section 214(d) automatic recordation provisions of an alien to permanent residence for K visa holders who legally conclude marriages within 90 days is out of step with other provisions in the law that generally permit the INS to appraise the legitimacy of a marriage before final adjustment to permanent residence takes place. We believe that substantial changes are needed in section 214(d) to allow more discretion after the marriage and to bring the evidentiary burdens of this provision more in line with other types of benefits based on marriage, i.e., the Attorney General should be satisfied that the marriage is legitimate, based on objective, articulable facts.

Further, section 101(a)(14) should be amended to define expressly the term fiancee or fiance of a citizen of the U.S. to include only one who has personally seen and met the petitioner. The business of mail order marriages has spread rapidly, and even if one acknowledges that in some rare cases legitimate cultural purposes are served by completely arranged marriages, there is still no excuse for retaining such a loophole on the books given today's ease of transcontinental travel.

Lastly, we do not understand why there is no statutory bar to section 245 adjustment of status for K visa holders where the marriage does not take place as planned. Where the alien beneficiary has resided in the United States less than 90 days, and probably has no relatives in this country, it seems inequitable to allow that person to remain here absent exceptional and compelling reasons.

4. What penalties or other forms of deterrence, if any, might be available to discourage persons considering fraudulent marriages? Should marriages entered into after an alien has become deportable be eligible for adjustment of status in the United States? Is the present five-year statute of limitations on rescission of adjustment of status adequate to detect or deter such frauds?

In response to these issues, we make the following recommendations:

a. Section 241(f)(1)(A)(i)&(ii) should be amended to require that the Attorney General may not waive section 212(a)(19) exclusion grounds where the relative in question is a citizen or permanent resident alien spouse, and the fraudulent procurement at issue is an attempt to acquire immigration benefits via a fraudulent marriage. Currently, this waiver operates almost as a rubber stamp for aliens who may engage in conduct prohibited by section 212(a)(19).

Further, the Department of State has taken the position that section 212(a)(19) bars an alien who "seeks to procure, or has sought to procure, or has procured a visa or other documentation...by fraud, or by willfully misrepresenting a material fact" does not apply to the situation where an alien misrepresents a material fact on an application for adjustment of status. This interpretation is in conflict with that of the INS General Counsel, and the language should be amended to add the words "to a Consular Officer or Immigration Officer, whether the misrepresentation is detected before or after the alien has entered the United States" after the words "material fact."

b. Where adjustment of status is based on marriage, section 246(a) might be amended to create a two-year rebuttable presumption of fraud where the marriage terminates within two years after adjustment of status. Consideration should be given to the use of the temporary provisional status with automatic rescission for failure to report to the INS an annulment or termination within two years of the date of adjustment to provisional status (similar to the arrangement considered above in connection with 241(c)).

Further, because aliens often wait more than five years to apply for citizenship, another approach might be to extend the 246 statute of limitations for fraud rescissions for ten years or until the alien reapproaches the INS to apply for citizenship, whichever is earlier.

c. We believe that section 245 should be amended to make it clear that nonviablility of the marriage at the time the I-130 is filed is prima facie grounds for denial of the application or rescission of status. The current status quo makes a mockery of the policy goal of "family reunification," particularly where the couple is childless. In the alternative, one might create a rebuttable presumption of fraud if a childless marriage is alleged by one of the parties to have been nonviable at the time the I-130 was filed.

d. We suggest that section 204(c) should be amended to operate to deny subsequent adjustment applications to aliens who have previously applied for adjustment of status based on a fraudulent marriage, but because fraud was detected before the earlier status was granted, never received status previously. The current language permits aliens to reapply for adjustment of status so long as an earlier attempt at fraud did not result in the actual grant of permanent residence. Aliens should not be rewarded with permanent residence merely because a previous fraudulent marriage scheme was detected too early in the attempt to come within the statutory bar. It is a loophole that needs to be closed.

e. We would concur with and support any proposal that would amend section 245(c) to add a provision barring adjustment of status by any alien where the petition's application is based on a marriage entered into any time after the order to show cause has issued under section 242(1)(b).

f. Lastly, we recommend that the act should be amended to bar any alien who acquired immigration benefits through marriage to a U.S. citizen or lawful permanent resident alien from filing a second preference petition on behalf of any other spouse for a period of five years from the date of admission or adjustment of status.

Mr. Chairman, we believe that adoption of these recommendations would go a long way towards restoring the integrity of the marriage preferences. The grant of immigration benefits based on marriage is an act of generosity and kindness given to immigrants by the American people, and it should not be allowed to degenerate into a vehicle for massive fraud. With these proposals, we can allow our humanitarian instincts and

national ethics to remain intact, while insuring that those who assert the benefits of a marriage are possessed of a relationship worthy of the institution.

Thank you for the opportunity to present FAIR's views on this important subject. I would be happy to answer any questions you may have at this time.

Senator SIMPSON. Next we have Jules Coven.

Mr. COVEN. Thank you very much. My name is Jules Coven. I am the president of the American Immigration Lawyers Association, and I wish to thank the committee for allowing us to testify on this subject today.

The American Immigration Lawyers Association is a specialty bar association of approximately 1,850 lawyers nationwide. We have 29 chapters in the United States plus at-large members.

We were founded in 1946 and I have been the president since June of this year. I have been a practicing attorney in immigration law in New York City for approximtely 25 years and I am presently an adjunct professor at Brooklyn Law School teaching immigration law.

I not only feel that I am speaking for the American Immigration Lawyers Association, but since we are an organization that does represent aliens and citizens in the United States, and since the aliens who are possibly going to be future candidates for immigrant visas based upon their marriage, I am also here for that unspoken for group of people.

We, one, wish to thank the committee for bringing attention to a problem that is a problem that has been involved in immigration law for many, many years.

However the serious nature of the problem, there are more serious problems with the immigration law. I also would like to point out, Mr. Chairman, that the present system that is in fact in the immigration law probably could take care of most of the situations that we have seen described before your committee today.

However, as one of the first witnesses who testified in the second panel said, "I went to Immigration and the job wasn't done."

There is no question, as a lawyer, in my mind, that if that case was presented to the Immigration Service, the best counsel would not have been able to help that particular alien doctor, because if he admits that he committed a fraud, and the action is brought before the Immigration Service, that man can be deported from the United States.

The second case was very interesting, Your Honor. In fact the Immigration Service did enter an order of deportation.

There the system has worked, Your Honor. I also would like to say that in a fourth case, the situation, and the present law, also, was effective in dealing with the problem, the people went to jail, and as she indicated, she thinks some of them were deported.

Unless you want to bring back the rack, Mr. Chairman, I do not know what more we can do. I would also like to say that, as Mr. Penner said, what we need, Mr. Chairman, is more effective and, the Immigration Service should be more effective review of petitions at the time of the initial interview.

They can question the aliens and in fact they do question the aliens. If the law would be enforced presently, these problems would not be in existence.

One of the questions raised was, if a person gets an immigration benefit based upon a fraudulent marriage, he should not be allowed to get another green card.

Mr. Chairman, that is in the law. 204(c) says, that if you are the beneficiary of an immigrant visa based upon a marriage fraud, and it is discovered by the Immigration Service, you are permanently barred from admission to the United States on two grounds.

One of the grounds, Mr. Chairman, is that another petition cannot be filed even if it is filed on another ground.

That means that if you lose your green card based upon a fraudulent marriage, if your brother becomes a citizen, or you should remarry, a visa petition cannot be filed in your behalf.

It cannot be approved, and there is no waiver of this, Mr. Chairman, because you cannot file such a petition. It cannot be approved and there is no waiver.

The criminal penalties are there. All we need is enforcement. If the Immigration Service finds a fraud, we say the law should be enforced, and when, Mr. Chairman, attorneys are found guilty of arranging sham marriages, we are not against those attorneys being prosecuted, or the marriage arrangers being prosecuted.

However, it is, Mr. Chairman, a difficult problem. In many instances, we, as lawyers representing aliens, do become cynical.

I remember when I first started practicing a number of years ago, I had a client come to me who was an American citizen, and her boyfriend basically had been arrested by Immigration, and she said, "Mr. Coven, I love this man." This fellow was a Greek crewman who jumped ship. Many of these people come here and they really create a relationship so that they possibly can get a green card. I said, "Listen, I know this business and I know aliens."

So I went up to see the seaman at the detention facility, and after interviewing him I said—I came down and spoke to my client and said, "This fellow is a phony; don't marry him; and not only that, don't put up the bond for him because you're going to lose your money."

She said, "Mr. Coven, I love him." Well, love conquers all. She bailed him out; she married him. I filed a petition for him, if she insists she loves him, what more can I do?

Anyway, Your Honor, this man is still a client of mine, he is an American citizen, they have two or three children, and at that point, Mr. Chairman, I found it difficult to start to make a determination as to what was a true marriage and what was not a true marriage.

However, in the system that presently exists, there are protections for the American public and for the Immigration Service, because one, when you file for citizenship, you can only file after 3 years if you are living with your wife who is an American citizen; you must wait 5 years if you are not living with your wife.

Certainly the case of the person saying, well, after 3 years you can become an American citizen, is incorrect, because if you are not living with your wife and you do not make such an allegation in your naturalization petition, you cannot become a citizen.

Two, the interviewer, who interviews the person when they apply for naturalization, his job is to checkup and to see whether that immigrant visa was properly issued, and in fact, right in the system, we have this follow-up, not a post audit, because if this person who wanted to extend that empire came to a naturalization examiner 3 years later—first, his application should be denied because he was not living with his wife; and second, if the immigration examiner and naturalization examiner asked him, "Where is your wife?", and found out that the marriage had been terminated, or she had left shortly after he arrived, the examiner would deny the application for naturalization, and the alien could lose his immigrant status, and certainly could not establish any empire.

Second, the question of filing an application for a second spouse, after you divorce your first spouse, again is a responsibility by the Immigration Service to take a look at that second petition.

They take a look at the divorce papers. Those divorce papers are submitted. If you see a divorce was entered into shortly after the person's green card, the Immigration Service has a public duty to bring it forth and say hey, maybe we should call this person in for an interview and review the situation.

Mr. Chairman, I think, by the way, one of the suggestions made by Mr. North is an important suggestion and it appears in a different form, basically, in our statement.

The concept of advising citizens and the people who file the petition, that filing a petition is a serious matter, and that there are criminal penalties, and say advertise, and these hearings are doing that, and I thank you for bringing this matter to the attention of the public. Thank you very much, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF JULES E. COVEN

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear before you today to testify on the subject of immigration marriage and fiance(e) abuse.

The American Immigration Lawyers Association (AILA) is a specialty bar association of some 1,850 attorneys nationwide, organized into 29 local chapters plus at-large members. AILA was founded in 1946 and is an Affiliated Organization of the American Bar Association. I have had the honor to serve as President of AILA since June of this year and have been a national officer of the Association since 1980. I have been engaged in the private practice of immigration law in New York City for over 25 years, and I am currently teaching immigration law as an Adjunct Professor at the Brooklyn School of Law.

ABUSE OF IMMIGRATION BENEFITS ACCORDED TO SPOUSES AND FIANCES

For the record, I wish to begin my remarks by stating that our Association unequivocally condemns those who would seek to obtain benefits under our immigration laws by engaging in fraud or by knowingly assisting in the fraudulent abuse of such laws.

Immigration to the United States continues to be as attractive a prospect to individuals in many lands as it was to the ancestors of most Americans in years past. The Immigration and Nationality Act rightfully accords special immigration benefits to the spouses of United States citizens, and it permits the temporary entry of fiances to marry United States citizens and the permanent immigration of spouses of lawful permanent residents. These benefits are based on the desire to encourage and support family unification, which has long been an accepted and principal goal of United States immigration policy.

In a qualitative sense, it is difficult to imagine an abuse of our immigration laws more serious than fraudulently entering a marital relationship. Marriage fraud for immigration purposes is not only a serious violation of our nation's laws, it is an offense against [what many Americans still consider to be] the sacred institution of marriage.

However, in a quantitative sense, it is less clear that immigration fraud through marriage is the most serious problem confronting the enforcement of our immigration laws today. Please do not misunderstand me on this point, I am as outraged as anyone by a single case of marriage fraud for immigration purposes and will support the vigorous prosecution of those knowingly involved without exception. Rather, it is not apparent from my general familiarity with developments in the immigration field that the number of spouse petitions based on "sham marriages" has significantly increased over the past ten years or, for that matter, since I began practicing law in 1958. Moreover, I would be extremely surprised to learn, if it could be shown statistically, that more than one or two percent of the "green cards" issued anually on the basis of marriage involved fraud. I base this opinion on my experience from representing thousands of immigrants, years of "shop talk" with hundreds of immigration lawyers and government officers, and on my knowledge of the Immigration and Naturalization Service's current procedures to detect fraud in the examination and investigation processes which, given its present resources, I conclude are relatively successful.

Let me now repeat, on behalf of myself and AILA, that marriage fraud for immigration purposes is a serious subject that, while not some new hemorrhage of abuse of United States immigration laws, is worthy of the Subcommittee's attention in the interest of better deterring and detecting such violations as may now exist.

PRESENT DETERRENTS AND PENALTIES FOR FRAUDULENT MARRIAGES

Before addressing the proposals and questions now under consideration by the Subcommittee staff, I would like to briefly outline the existing deterrents to marriage fraud for immigration purposes and some of the penalties to which an abuser would be subject under current law.

Qualifying for nonimmigrant admission to the United States as the fiance(e) of a U.S. citizen. An alien may qualify for admission to the United States as a "K-1" nonimmigrant if she can prove she is the fiancee of a U.S. citizen and that she

seeks to enter solely to conclude a valid marriage with such U.S. citizen within 90 days after entry (8 U.S.C. §1101(a)(15)(K)). The burden of proving eligibility is on the alien (and the U.S. citizen fiance(e)) and must be met at three separate and distinct points.

First, the U.S. citizen fiance(e) must obtain approval of a petition on behalf of the alien from an INS District Office. Second, the alien beneficiary of an approved petition must then apply for a "K-1" visa at a U.S. Consulate overseas. Because, under 22 C.F.R. §41.66(c), applicants for "K-1" visas are to be treated as if they were applying for an immigrant visa, it is common knowledge that processing of "K-1" applications by U.S. Consulates normally takes longer and will be subject to more scrutiny than other nonimmigrant visas.

Finally, before admission to the U.S. is permitted, the alien holder of a "K-1" visa will be inspected at the U.S. port of entry or border check point. At this point, any doubt as to eligibility must be resolved by an immigration judge in exclusion proceedings. Only after concluding the marriage to the U.S. citizen will the "K-1" nonimmigrant be eligible to apply for adjustment of status in the United States to permanent residence.

Qualifying for adjustment of status to permanent residence as the spouse of a U.S. citizen or lawful permanent resident. Like the process of qualifying as a nonimmigrant fiance(e), the procedure for obtaining permanent residence based on marriage is a multi-step process, with the burden of proving eligibility on the alien beneficiary (and the U.S. citizen petitioner). The U.S. citizen spouse must obtain approval of a petition on behalf of the alien spouse, and the alien spouse must apply for adjustment of status.

As a matter of administrative efficiency, the petition and the application for adjustment are often filed simultaneously. Approval of the petition is, practically speaking, usually a matter of establishing documentary eligibility. However, approval of the adjustment application involves one of the highest levels of scrutiny now employed in adjudications by the Immigration and Naturalization Service.

Under the present "Balanced Adjudications System" necessitated by the limited resources available to the Service, the adjustment of status application is one of the few remaining adjudications of the INS in which personal interviews are required in every case. In addition to the usual determinations of the statutory eligibility and the absence of applicable grounds of excludability, applicants for adjustment of status based on marriage are routinely interviewed separate from their spouse in what is commonly called the "marriage fraud interview."

Not unlike a popular T.V. game show, each spouse is asked questions about the minute details of their married life, answers to which would be very difficult to provide accurately unless the couple were, in fact, living together as husband and wife. If the couple is unable to meet their burden of proof, a subsequent interview may be scheduled or the case may be referred to Investigations for detection of possible fraud. If the interview is successfully completed, the application is held for 60 days and, if no adverse information is received, will then be adjudicated without further interviews.

Rescission, denaturalization, and deportation based on marriage fraud. A comprehensive description of the procedures involved in rescission of adjustment of status, denaturalization, or deportation of a "lawful" permanent resident, where it is alleged that such status was obtained on the basis of a fraudulent marriage or documentation, is set forth in Immigration and Nationality Law-39th Anniversary Symposium of the American Immigration Lawyers Association (1985). Current law, however, can be fairly summarized as holding that permanent residence (and any subsequent naturalization) obtained through a fraudulent marriage is void and that there is no effective statute of limitations that would prevent deportation or denaturalization. Evidence of marriage fraud may be in the form of testimony by one of the parties, but even where both parties assert the validity of the marriage, contrary inferences may be properly drawn from their subsequent conduct. Most commonly, the government will rely on the statutory presumption that an

alien who obtains permanent residence based on a marriage entered into within two years admission is presumed to have obtained it by fraud if the marriage is judicially terminated within two years of entry (8 U.S.C. §1251(c)). Quite candidly I must add that this presumption is regarded by the immigration bar as an extremely high hurdle and that no immigration lawyer I know would presume to attempt to overcome it unless thoroughly convinced of the validity of the marriage in question, and of course, communications of a lawyer in futherance of a fraud are not covered by the attorney-client privilege.

Collateral consequences of marriage fraud. Perhaps the greatest deterrent to an alien's attempting to obtain an immigrant visa through a fraudulent marriage is that the penalty therefor is the most severe, non-criminal punishment found in our immigration laws: the perpetual bar from lawful permanent residence under 8 U.S.C. §1154(c). An alien who obtains a visa through marriage fraud is also thereafter barred from eligibility for a nonimmigrant visa and from entering the United States under 8 U.S.C. §1182(a)(19).

Criminal penalties for marriage fraud. In addition to the severe immigration law penalties to which an alien is subject for obtaining immigration benefits through marriage fraud, both the alien and the U.S. citizen "spouse" are liable to criminal prosecution under a variety of federal statutes. These offenses include: (1) knowingly making any false statement under oath with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations (18 U.S.C. §1546: punishable by $2000 fine, or five years imprisonment, or both); (2) perjury (18 U.S.C. § 1621: $2000 fine, or 5 years imprisonment or both); (3) materially false statements to a federal agency (18 U.S.C. §1001: $10,000 fine, or 5 years imprisonment, or both); and (4) conspiracy to commit an offense against a federal agency (13 U.S.C. §371: $10,000 fine, or 5 years imprisonment, or both).

Professional responsibility of counsel. In my opinion, attorneys practicing in the immigration field also play a significant role in deterring marriage fraud for immigration

purposes. Beyond refusing to represent clients who are determined to commit fraud, we believe it is a professional responsibility of lawyers to strongly counsel against any considerations of fraud and to advise both aliens and U.S. citizens of the severe consequences that can result, I think this is a sermon routinely preached by lawyers to those who are naive or cynical enough to believe that a marriage license, however obtained, will solve all immigration problems. I will not deny that there have been and probably will be a few unscrupulous lawyers whose greed will lead them to participate in marriage fraud or to recklessly disregard the truthfulness of clients' circumstances that they have every reason to believe are false, they should be shunned from the professional and dealt with by other enforcement agencies. But I am convinced that the immigration bar plays an important positive role in deterring fraud and that the dishonest few, however despicable, are the extreme exception.

RESOURCES AVAILABLE TO DETER AND DETECT MARRIAGE FRAUD

I have outlined above the wide variety of opportunities, procedures, and penalties to deter and detect marriage fraud for immigration purposes in order to show that there is, under current law, no shortage of enforcement mechanisms. Rather, if there is a present weakness in our ability to prevent or penalize such fraud, it is the shortage of resources and experienced personnel in the Examinations and Legal Departments of the INS District Offices and of Consular Officers at the U.S. Embassies and Consulates overseas, imposed by currect budget constraints. In my view, these limitations will only be more severely aggravated and will not bring about the desired result if the main procedural proposals now contemplated by the Subcommittee staff are enacted into law.

CONDITIONAL APPROVAL OF SPOUSAL PETITIONS

Of the two main approaches suggested to us in preparation for these hearings, AILA would least support the conditional approval of spouse petitions subject to final approval after two years. The imposition of a second review of all marriage cases--the

overwhelming majority of bona fide petitions along with the relatively small number of "sham marriages" for which petitions are approved--however attractive in theory, could not help but, as a practical matter, double the workload of the already beleaguered District Offices of the INS. This would be an extremely unfortunate consequence in the absence of substantially increased appropriations, mindful as I am that it would also result in increased legal fees paid to immigration lawyers.

Under this proposal, we would also fear that the conditional approval of a spousal petition would come to be mistaken for a policy that the act of marriage itself to an alien was likewise conditional. While I have no doubt that an alien already determined to commit fraud could "hold out" for the extra period of time, such a policy would seem to undermine support for the success of the altogether valid marriages that are more subject to the frailties of human nature.

"POST AUDIT" REVIEW OF SPOUSAL PETITIONS

The other main approach suggested by the Subcommittee staff, "post audit" review of spousal petitions, appears to differ from current law only in that it would require universal review of all such petitions rather than what I would characterize as the present "selective" review of only those cases where there is reason to believe that the underlying marriage was fraudulent.

Obviously, this would impose a substantial increase in the INS workload, as mentioned above, although presumably to a lesser degree. What would prevent such a universal post audit review from developing into a pro forma exercise, in the absence of substantially increased appropriations, I cannot predict. I do know that, under present law, the validity of marriages that are soon terminated after accordance of an immigration benefit continue to receive scrutiny and review upon any subsequent filing of petitions for immigration benefits or naturalization, and even upon subsequent entries in extreme cases.

STANDARD OF REVIEW

Even if either of the above new approaches were adopted, we would argue that the fundamental question must remain what was the intent of the parties at the time the marriage was entered into. If, as under present law, it is determined that the marriage was entered into for the purpose of evading the immigration laws, it was a sham marriage. Under this standard, judicial termination of the marriage within two years should continue to establish the presumption of fraud, while evidence of lack of cohabitation, of fees paid, etc., and conversely of the birth of children and mutual family involvement, etc., must be weighed by the trier of fact and appropriate inferences can be drawn.

Beyond the "two-year presumption," we would argue against imposition of any further "longevity test" that would result in the automatic revocation of the immigration benefits obtained in the event a marriage did not "last" a requisite period of years.

OTHER MEASURES TO DETER MARRIAGE FRAUD

There are a number of measures we can suggest that could reduce the incidence of marriage fraud for immigration purposes without such radical changes to the present law.

First and foremost is the provision of increased appropriations to the Immigration and Naturalization Service and the Bureau of Consular Affairs for more examinations and legal personnel and Consular Officers to deal specifically with these issues.

Second is consideration of increases in the penalties for convictions of fraud and other criminal offenses cited above.

Third is encouragement of increased investigatory and prosecutorial vigor against the organizers of "sham marriage rings."

Finally, and in conjunction with all of the above, is increased warnings and publicity of the unlawfulness and dire consequences of participating in a "sham marriage" for immigration purposes, targeted both at naive and unscrupulous aliens and their U.S. citizen and lawful permanent resident

counterparts. For instance, the current form I-130, petition to classify status of alien relative for issuance of immigrant visa, contains only three short lines of fine print warning of unspecific "severe penalties" for knowingly and willfully falsifying or concealing a material fact or using any false document. A single, full-page attachment more clearly and specifically setting forth laws and potential penalties for abusers would be an economical first step to deter those who may believe there is little risk, especially to a U.S. citizen, of casually conspiring to commit marriage fraud.

CONCLUSION

In conclusion, I respectfully submit that no statutory changes would be as effective as the provision of more adequate agency resources to examine spouse petitions and to prosecute "sham marriages."

I thank you, on behalf of the American Immigration Lawyers Association, for this opportunity to be heard, and I would be pleased to answer any questions you or the other Members of the Subcommittee may have.

Respectfully Submitted,

JULES E COVEN
President
American Immigration Lawyers
Association

Senator SIMPSON. Thank you very much. Just a few questions. David North. I might ask, is it your belief that marriage to an American citizen has really become almost the preferred method by which otherwise ineligible aliens can obtain permanent resident status, and, if that is so, what factors do you feel contribute to making that so extremely attractive?

Mr. NORTH. The first thing we should bear in mind, and I am looking at this again from a broad picture, not on a case-by-case point of view—the first thing we should bear in mind, that our immigration law, quite frankly, is soaked in nepotism.

Something like 17 percent of the visas that we issue within the numerical limits are for people other than relatives, 83 percent are for relatives.

This is first and second and fourth and fifth preference. In addition, virtually all the people coming in outside the numerical limits are coming in as somebody's relatives.

So an alien who wants to come to the United States or adjusts to permanent resident alien status while in the United States is faced with a system that says that something like 80 or 90 percent of the immigrant visas are given to somebody's relatives.

Well, the aliens are no fools and they recognize that what is important, apparently, to our immigration law are these relationships. Some of these relationships, as you have suggested, are quite distant.

One does not even have to have ever met the niece or the nephew on fifth preference to file for it. And so I think that because we do not have any kind of independent class of immigrants, there is no possibility, for instance, of somebody without a U.S. employer, who has a skill—it is extremely difficult for such a person to immigrate though they might be very valuable.

Investors who are pursued with vigor by the Australian and Canadian Governments are quite thoroughly barred from coming to the United States as investors.

So I think our whole system is rigged for relatives and some people are taking advantage of it by these sham marriages.

Senator SIMPSON. That is a statement that many American citizens would not be able to track one whit, but you are very, very correct in what you say, and in the early measures of the first draft of the first Senate version of the bill that passed, we opened the special category of "independent immigrants," of 75,000 a year, trying to break that long chain of simply family members, you know, without any recognition or even knowledge as to who some of those family members were. You know, just that "it is important that I get them here," and here we go. It is extraordinary, you know, as you get into it, but anyway, you suggest the British plan. If we were to incorporate the British plan and grant the alien spouse a 1-year nonimmigrant visa, and authorize his employment during that year, what effect would that have on the INS practice, which is the parallel husband and wife interviews—you know—trying to show this intimate relationship?

What effect would that have there, or, would it enable INS in any way to get out of that business? Tell me your thoughts on that.

Mr. NORTH. Again I am thinking in terms of systems, and I think it is useful to make everybody aware that they will have to prove

that they have in fact been married 2 years later. I think that that is a deterrence, in and of itself.

I think it is a perfectly legitimate one. Two people who are really in love with each other will not be hurt by this. The alien in a case like that will be inconvenienced, in the sense that the alien will have to go to the Immigration Service twice instead of once, but that is the only drawback in a legitimate case.

And my suggestion would be like INS's, that it be a 2-year period, that the 2 years be counted retroactively for naturalization later. That the alien during that period will have complete freedom in the American labor market, and a document that allows him to cross our borders.

So the only people who would be hurt by that are the people who were engaged in a sham marriage, or the people who are discouraged from being engaged in a sham marriage for fear that they would have to carry this out for 2 years.

Now, that is why I think that that is a good approach, because I think it would deter people from doing that.

Senator SIMPSON. All right. Thank you. Roger Conner, if I might ask. Now Mr. Coven, in his testimony, has stated that creation of a conditional status for spouses would imply that the marriage itself was conditional and that the status would downgrade the status of the alien citizen marriage, and how do you respond to that viewpoint?

Mr. CONNER. I guess I was sadly disappointed from the testimony that I heard from my fellow lawyers this morning, which is: (a) there is no problem, or (b) if there is a problem, blame it on the INS.

That is an old explanation of the problem but I guess I was hoping for more in the way of constructive solutions, The suggestion that giving a person who has applied for permanent residence on the basis of the fact that they are married to an American citizen, to give them temporary residence for 2 years, I just do not see how, in any way, that relates to the sanctity, validity, strength, or meaningfulness of their marriage. The strength, sanctity, and meaningfulness of their marriage is based on their marriage vows, the strength of the relationship between the people, and frankly, for the valid marriage, I do not think a provisional status would have much to do with the success of the marriage.

It would be little more for the person who is making a valid application than, as Mr. North just suggested, a minor inconvenience.

It would be a major obstacle for those who are trying to fraudulently secure admission to this country by either manipulating the emotions of an American citizen or conniving with an American citizen by the payment of money, because stringing the thing out for a 2-year period would be far more difficult.

I just cannot see how this throws any doubt on the marriage relationship.

Senator SIMPSON. Well, if we were to provide for a 2-year conditional period, which you suggest, would not the word go quickly out in the communities, that you should stay married for 2 years to get this status?

In other words, that would be quite an obvious message. How would that have helped the witnesses who were here today, or,

those other citizens who were duped into marriage? I would like your views on that.

Mr. CONNER. First of all, the reason we have listed a long series of loophole-closing amendments in addition to that one, is that this is not a panacea.

But second of all, speaking as one who has lived with the same spouse for somewhat over 10 years now, 2 years is a good long time to keep a marriage going, and so that it would tend to cut down on the quickie marriage and divorce, but it is not, as I concede, a panacea.

Senator SIMPSON. Mr. Coven, just a few questions, and you can of course have rebuttal here with your colleague at the table. But Commissioner Nelson mentions a rate of fraud in these cases of as much as 30 percent, and the testimony that Mr. Conner shares with us contains a letter from a New York immigration lawyer saying that 90 to 95 percent of the marriage cases that came to his office involved sham marriages.

And yet your testimony pulls that down, down plays that, estimating perhaps 1 or 2 percent of marriage-based visas.

Why do you feel there is such a diversity of opinion on that question?

Mr. COVEN. Well, one, Mr. Chairman if the rate was 30 to 40 percent, then the Immigration Service is not really performing properly, and I do not believe that—I think they are doing a better job than that, Mr. Chairman.

One, in New York, they conduct fairly extensive interviews and with reference to the letter sent by the anonymous person, who we do not know who it is, if he said that all of those cases went through, I will tell you something: He is doing better than I am with legitimate cases, because my rate of success on marriage cases, at the initial stage, is not 100 percent.

On cases which I am sure that the marriage is a valid marriage and not for immigration purposes, my success rate is not that high, and there are problems created by the Immigration Service.

They ask very detailed questions and I will say this to you: That I sometimes am embarrassed by some of the questions put to the parties by the Immigration Service.

Now I am not saying, Mr. Chairman, that every case submitted by an attorney or every case submitted by an alien and a citizen is a valid marriage.

But that 30 to 40 percent, I do not know where they get it from because I know other statistics show that 95 to 97 percent of the visa petitions that are filed are approved.

Now it may be that that 30 to 40 percent means both discovered, also suspected cases. Now I do not think all of the cases that are fraudulent get through. I do not believe so, and in fact, the testimony by the number of cases that was stopped in New Jersey, that is a substantial part of the numbers.

They detected 200 that did not go through, so they are doing their job in that way.

Senator SIMPSON. Let me ask you what it is that you see in the system today, that presently exists, that makes it likely that an overburdened and sometimes overwhelmed INS will discover a

fraudulent marriage, such as that of our first citizen witness, Ms. Narielwala?

And if the husband/alien were wise enough to refrain from declaring that his citizen/wife was his ticket to America or his green card deluxe?

Mr. COVEN. Well, one, in that particular case there was an admission by the person that he did commit the fraud. However, the burden within the 2-year period is on the alien to prove that the marriage was a valid marriage and it was not made for immigration purposes.

And I will say this: that they are very difficult cases to defend if you are in a deportation proceedings. It is a very difficult burden to overcome.

If the woman comes in and says, "This man married me," or the man comes in and said, "This woman married me to obtain permanent residence within that period" it is difficult to win the case, and I would say the courts are full of cases where the spouse has lost his green card or permanent residence in the United States because of that.

Senator SIMPSON. If the reason for granting spouses our most very preferred immigrant status is family reunification, husband and wife reunification, what justification then do you see for making a permanent grant of residence status to an alien who divorces his wife within a matter of a few months after the marriage?

Is that not sort of a situation which gives a strong argument for creating some period of conditional status?

Mr. COVEN. Well, I think you have to look at what are you assuming? If we assumed that a majority of the marriages were entered into in good faith and a problem arose after the marriage, and possibly 1 year after, 1 year and 11 months after, in many cases the citizen-spouse or the permanent resident alien might be at fault in that marriage.

I have had cases where, while the application was pending, because of the very frailties of a marriage, a woman would call up and say withdraw the petition; 3 weeks later come back, put the petition back in.

I think what happens is that by the very frailties of marriage and human beings, we are—this is a very personal situation in many cases. In most cases. And if we are saying that a majority of the marriages—and nobody is saying that less than the majority of the marriages are bad marriages. But people get divorced in the United States.

Unfortunately the divorce rate is very high, approximately 50 percent, and we are sort of ignoring that particular problem.

Now in many cases, if the citizen-spouse is at fault, and they say, "Well, if this person wants to terminate her marriage, and one of the ground that she can—the threat that she could have is say 'We're going to get you deported,' " on a marriage that was entered into for true love and for no other reason, that would, I would say, put pressure on people. That would sometimes make life more difficult, and I understand in this country we try to make life worth living, and I feel, Mr. Chairman, that the pressures that are in

marriages today, in all marriages, would certainly, the problems would be heightened.

Senator SIMPSON. Well, just a final question. How about a provision, if we were to, as we pursue this possible legislation, that would require an alien before being admitted as the fiance of an American citizen, to have at least met the citizen face to face on some occasion?

Mr. COVEN. On the fiance petition?

Senator SIMPSON. Yes.

Mr. COVEN. Yes. Well, Mr. Chairman, it is there, it is in the regulations. It is not specifically said but in the regulations——

Senator SIMPSON. Yes; I know.

Mr. COVEN [continuing]. It says that——

Senator SIMPSON. That ought to be a first thing for true love, should it not?

Mr. COVEN. The meeting——

Senator SIMPSON. That you have met the person face to face somewhere?

Mr. COVEN. Absolutely. However, that is a factor that first the Immigration Service must consider and also the consul in reviewing the application must consider.

Interestingly enough, Mr. Chairman, in a fiance petition you have three or four reviews, the first of the initial filing of the petition with the Immigration Service and the specific question is asked, have you met the person? Two, the consular interview of the fiance. And three, after they get married, when they come back, they are reinterviewed by the Immigration Service to see that they are, were married.

So there is a lot of protection there.

Senator SIMPSON. Well, I want to thank you very much for sharing with us some very important material and we are going to pursue it. It is a very vexatious thing to me, and in the 4 years I have been chairing the subcommittee I think it has kind of been fascinating for me to get back and listen to things I used to listen to in 18 years of practicing law, especially with the citizen witnesses.

I did about 1,400 divorces in 20 years of law practice and it just spirited me back, thoroughly. That was something that was very—it was not the main part of my practice, certainly, but it was a part that, where I learned a lot about human beings and their anguish and pain, and I appreciate those witnesses, more than you know, appearing here to do that.

I appreciate also hearing how—I think it is a prevalent thing and I think we had better get into it, and I think we can remedy it. At least we can prevent people from hauling the garbage to a new pit, when they do it once, and then do it again, and then do it again.

So, I appreciate the thoughtful testimony; it was well done. I think there is a need for legislation. We are going to begin to draft that.

And since we have been talking about spans of marriages—I have heard that bandied about, the 10 year and the 20—and I just see this chick I have been living with for 31 years has wandered in here, and there she is back there. Married all that time of course.

And so, thank you, and I want to thank John Ratigan for the marvelous work he has done here. He leaves me now. He has been here for 1 year on assignment from the State Department. He put together this hearing.

He goes back to the Bureau of Refugee Affairs. He has been here as a Pearson fellow. I do not know Pearson but I know Ratigan and he is quite a fellow, and I really appreciate, and I thank him for all he has done. You have been remarkable, John, and especially with this fine hearing that you presented.

And to all those who assisted, Dick Day and the fine staff of the subcommittee, I appreciate it, and particularly to these witnesses on a very provocative area that I am going to pursue. Thank you.

[Whereupon, at 11:39 a.m., the subcommittee was adjourned, subject to call of the Chair.]

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